

Polit. gen. 64^d

PAPERS

OF THE

COMMISSION

PUBLIC INSTRUCTION

<36612284310011

<36612284310011

Bayer. Staatsbibliothek 

PAPERS
AND
CODIFICATION
AND
PUBLIC INSTRUCTION

PAPERS

RELATIVE TO

CODIFICATION

AND

PUBLIC INSTRUCTION.

PAPERS

RELATIVE TO

CODIFICATION

AND

PUBLIC INSTRUCTION

PAPERS
RELATIVE TO
CODIFICATION
AND
PUBLIC INSTRUCTION:
INCLUDING
CORRESPONDENCE
WITH
THE RUSSIAN EMPEROR,
AND
DIVERS CONSTITUTED AUTHORITIES
IN
THE AMERICAN UNITED STATES.

PUBLISHED BY
JEREMY BENTHAM.

London:

PRINTED BY J. M'CREEERY, BLACK-HORSE-COURT;
AND SOLD BY PAYNE AND FOSS, PALL-MALL;
AND
R. HUNTER, (SUCCESSOR TO MR. JOHNSON) ST. PAUL'S
CHURCH-YARD.

1817

PAPERS

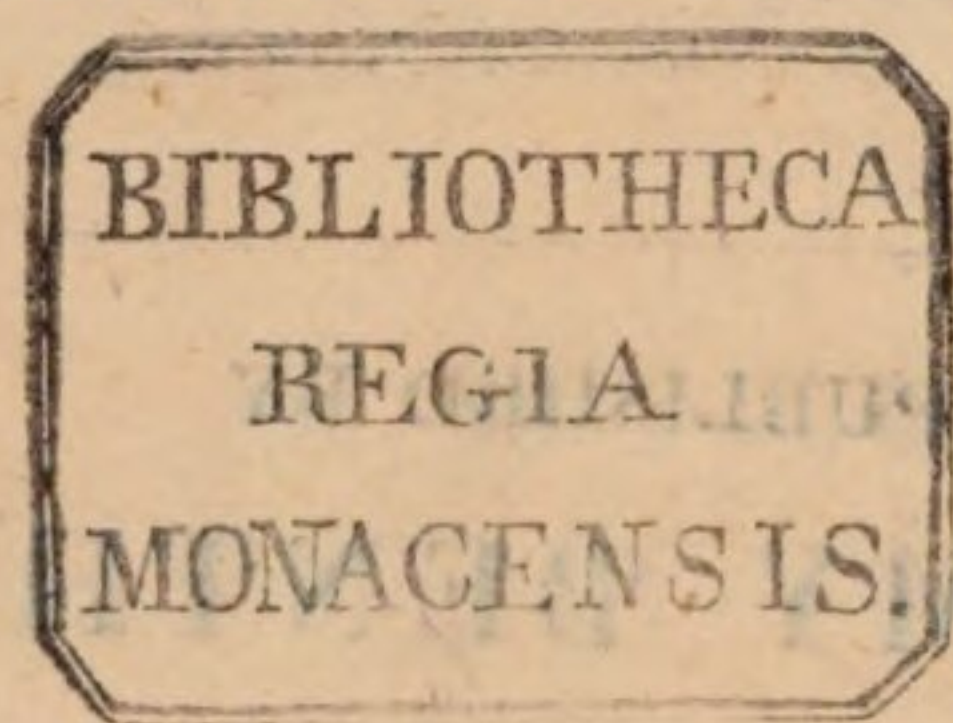
CODIFICATION

PUBLIC INSTRUCTION

CORRESPONDENCE

THE RUSSIAN EMPIRE

IN THE UNITED STATES



LONDON:

AND SOLD BY WATTS AND TAYLOR, PATENT

CHURCHILL, (SUCCESSOR TO MR. JOHNSON) ST. PAULS

1817

CONTENTS.

PART I.

ON CODIFICATION.

- No. I. Jeremy Bentham, London, to James Madison, then President of the Congress of the American United States.
—*London, October, 1811* p. 1
- No. II. James Madison, then President of the Congress of the American United States, to Jeremy Bentham, London.
—*Washington, 8th May, 1816* p. 67
- No. III. Albert Gallatin, Minister Plenipotentiary from the American United States to the Court of London, to Simon Snyder, Governor of Pennsylvania, introducing a Letter from Jeremy Bentham to the said Governor.—*London, 18th June, 1814* p. 71
- No. IV. Simon Snyder, Governor of Pennsylvania, to David Meade Randolph, Esq. Williamsburgh, Virginia, on the subject of the above-mentioned Letter of Jeremy Bentham.
—*Harrisburg, 31st May, 1816* p. 75
- No. V. Extract from a printed Paper, signed Simon Snyder, intituled Governor's Message to the Senate and House of Representatives of the Commonwealth of Pennsylvania.—
—*Harrisburg, December 5, 1816* p. 81
- No. VI. Jeremy Bentham, to the Emperor of all the Russias.—*London, July, 1814* p. 85
- No. VII. The Emperor of all the Russias to Jeremy Bentham, London.—*Vienna, April 22, 1815* p. 89
- No. VIII. Jeremy Bentham to the respective Governors of the American United States. (Circular.)—*London, June, 1817* p. 95

CONTENTS,

Continued.

PART I.

PART II.

ON PUBLIC INSTRUCTION.

- No. I. Governor of Virginia to divers persons on the subject of a system of Public Instruction proposed to be established in and for that State.—*Williamsburgh, April, 1816.* p. 101
- No. II. Jeremy Bentham to the respective Governors of the American United States. (Circular).—*London, June, 1817* p. 105
- No. III. Comte Delasteyrie, Paris, to Jeremy Bentham, London, on receipt of his Whole Sheet Chrestomathic Table ; including an abridged and systematized Tabular View of the Bell-and-Lancaster System of Instruction . . . p. 109
- No. IV. Notice taken of Jeremy Bentham's Chrestomathia by the Paris Mutual-Instruction Society . . . p. 111

TO THE
PRESIDENT
OF THE
UNITED STATES OF AMERICA.

Queen Square Place, Westminster,
October, 1811.

SIR,

THE offer, which it is the ambition of this address to submit to the consideration of the President of the United States, is addressed (you will see immediately) not to the person but to the Office. By an explanation thus early made, some reading will be saved to you. The respect, of which the offer itself is its own best testimonial, needs not, I presume, any more words for the expression of it.

To come to the point at once—Give me, Sir, the necessary encouragement,—I mean, a Letter importing *approbation* of this my humble proposal; and, as far as depends upon yourself, *acceptance*, I will forthwith set about drawing up, for the use of *the United States*, or such of them, if any, as may see reason to give their acceptance to it, *a compleat body* of proposed law, in the form of Statute law: say, in one word, a *Pannomion*,—a body of Statute law, including a succedaneum to that mass of foreign law, the yoke of which, in the *wordless*, as well

as boundless, and shapeless shape of *common*, alias *unwritten* law, remains still about your necks:—a *compleat* body, or such parts of it as the life and health of a man, whose age wants little of four and sixty, may allow of.

This letter, Sir,—I mean the letter above stipulated for,—when once I have it in hand, I have my *reward*. I have my *employment*: and the honour inseparable from the employment is the only retribution, that *can* be *accepted* for the labour of it.

I say “*accepted*” Sir,—not *required* or *expected* but *accepted*: for from this word corollaries will be deduced, the utility of which, with reference to the proposed service, will, I flatter myself, when brought to view, as they will be presently, not appear exposed to doubt.

The *plan* of the proposed work,—and therein the supposed *advantageous results*, the prospect of which forms what the proposal has to depend upon for its acceptance,—the circumstances of *advantage* attached to the nature of the *terms* on which the work would be executed,—the declared *objections* which it ought to be prepared for, together with the *answers* which those objections seem to admit of,—the latent, but not

the less powerful, *obstacles* which it may have to contend with, the *advances* already made towards the execution of it,—on all these several topics, some sort of explanation may naturally be looked for :—on all of them something in the way of explanation shall accordingly be attempted ; attempted, though in that state of extreme, and proportionably disadvantageous compression, without which no reasonable hope could be entertained of that promptitude of return in the way of answer, which may be requisite to success.

Before I come to particulars respecting the proposed *plan*, with its supposed *advantages*, it will be necessary for me to make reference, once for all, to a view of it which is already in print. I mean the work in 3 vols. 8vo. which, under the title of *Traité de Legislation, Civile et Penale par M. Jeremie Bentham, &c.* was, in the year 1802, published at Paris, by my Genevan friend, M. Dumont.

One copy of it was, upon its publication, sent (I understand) by the Editor, to his countryman Mr. *Gallatin*, Secretary of the Treasury to the United States ; whether, in your part of America, any other copies of it have ever been

in existence, it has not fallen in my way to know.

Far as those papers were from being considered by the author as having attained a state approaching to that of a finished work, yet of the plan which, on any such occasion as that in question, was then, and still would be, proposed to be pursued, a conception, sufficient for the purpose here in question, may, if I do not deceive myself, be obtained from them. Of the *details*, even of the proposed *text*, they exhibit samples more than one, nor those of small account.— So much of the plan being already *there*, it might seem that nothing in explanation of it, could be necessary in this place. But, without some preconceptions, how slight and general soever, of some of its most striking peculiarities, what it will immediately be necessary to say of it in the gross might scarcely be found intelligible.

§ I. *Nature and supposed Advantages of the proposed FORM.*

In a plan framed for any such purpose as that in question, *Matter* and *Form*—to one or other of these two heads, whatsoever features, whether

of excellence or imperfection, may be distinguishable, will, it is believed, be found referable.

1. As to *matter*, in the character of a *test* of, and *security* for, the fitness of the work in this respect—of one constituent portion pervading the whole mass, the *rationale*, (if so it may be termed) such will, at first glance, be seen to be the efficiency, that of this appendage, a brief intimation, however slight, may for the present purpose, be perhaps, of itself, sufficient.

By the *rationale* I mean, (for a sample see *Traité*s, &c. as above) a mass of *reasons*, accompanying, in the shape of a *perpetual commentary*, the whole mass of imperative or regulative matter,—the only sort of matter, to which any body of law as yet extant has ever yet been found to give admission.

Not a single point of any importance will, in any part, be settled, but that in the *rationale*, the considerations by which the provision made in relation to it was determined, will be to be found: and, by the connexion, which, through the medium of *the all-governing principle*, viz. *the principle of utility*, these *reasons* have with one another, and the repeated application made

of the *same* reason to different parts of the text, the quantity of space occupied by matter of this description, will be found to have been rendered much less than could readily have been imagined.

This *appendage*, or *component part*,—call it which you please,—this *perpetual Commentary of Reasons*, is what I will venture to propose as a *test*; and the only test, by which, either the *absolute* fitness or unfitness of any one proposed body of laws taken by itself, or of the *comparative* fitness of each one of any number of bodies of law, standing in competition with each other, and proposed as capable of serving for the same division in the field of legislation, any satisfactory *indication* can be afforded:—a test, to which, by a predetermined and pre-announced resolution, every such composition ought accordingly to be subjected.

Without this appendage, to draw up laws is of all literary tasks the easiest: *power* and *will*, wherever it happens to them to meet, suffice for it; of *intellect* there is no need.—On the other hand, if, *with* this addition, the task is of all tasks the most difficult, it is at the same time *that*, in the execution of which, whatsoever trouble may be found necessary to the sur-

mounting it, will find itself most worthily and richly paid for, by real and important use.

2. As to *form*—here again by one word—*cognoscibility*, every sort and degree of excellence, which, under *this* head, can be given to a body of law, will be found expressible.—On the fact of its being *present* to the mind of him, on whose part, to the effect indicated, *action* or *forbearance* is, on each occasion, called for, *present*—that is to say in the degree of *correctness* and *compleatness* necessary to the accomplishment of the legislator's purposes,—depends on each occasion, whatsoever good effect the law can be, or can have been designed to be, productive of. But, on the *form* thus given to the *matter*, will depend the degree of excellence, in which the property of *cognoscibility*, as thus explained, has been given to it: on the *form* therefore, will, in a proportionable degree, depend the practical good effect of whatsoever degree of excellence may have been given to the matter of the law.

Taking *cognoscibility* then for the *end*, the following may serve as a sample of the *means*,—the *securities*, which, in the plan in question, have been devised and provided for the attainment of that end.

I. Division of the whole *Pannomion* into two separate parts,—the *General Code*, and the system of *Particular Codes*.

In the *General Code* are comprised all such matters, of which it concerns *persons in general* to be apprised:—in the system of *Particular Codes*, each *Particular Code* contains such matters only, with which some *one* class or denomination of persons only have concern:—some *one* class or denomination, or in case of correlative classes of persons, running together in pairs, (such as *Husband* and *Wife*, *Master* and *Servant*, and so forth) some *two* or other such small *number* of classes or denominations, whose legal concerns are thus inseparably interwoven.

Merely for illustration sake, number of *Particular Codes* as above, say 200; average length of each, 5 pages. Consequent advantage, burthen of legal matter to be borne in mind by each person reduced from 1,000 pages to 5 pages. Such, in respect of *cognoscibility*, is the advantage, which this single arrangement suffices to produce. To more such classes, it is true, than one, will one and the same individual person be commonly found aggregated:—I mean, of those classes, which as above, would have each of them, its separate *code*. From the sort of

saving in question, a correspondent deduction would accordingly be to be made: but, for illustration, thus much, without going any further into calculation, may, it is supposed, suffice.

From *General Code to Particular Codes*, and *vice versâ*, frequent references will of course be necessary: nor in the working up of the one, can the texture of the other, consistently with clearness and mutual consistency, pass unheeded. But all this is matter of detail, for which no room can be found here.

II. In each code, as well *Particular* as *General*, an ulterior distinction, noted and acted upon, is the distinction between matter of *constant* concernment, and matter of *occasional* concernment. To produce the effect aimed at in the making of a law,—to produce the effect of *guidance*,—that which is matter of *constant* concernment must, in all its magnitude, in all its detail, be borne in mind at all times: while, in the case of that which is but matter of *occasional* concernment, the bare *knowledge* or *suspicion* of its existence will in general be sufficient; matters being so circumstanced, that, before the time for action comes, sufficient time for *reference* to the text of the law, and for

perusal of its contents, may, on all occasions, be found.

III. In each Code in which it is found requisite,—and in particular in the *Penal* branch of the *General* Code, in which it will *throughout* be found requisite,—another distinction and division made, is that between *Main Text*, and *Expository Matter* or *Exposition*.

The *Expository* matter consists of explanations, given of, or on the occasion of, this or that particular word in the *Main Text*. In the *Main Text*, each word so explained is distinguished by a particular type, accompanied by a *letter* or *figure* of reference, referring to that part of the expository matter in and by which it is explained; by which means the fact of its having thus received explanation, is rendered manifest to every eye.

In the course of the *Pannomion*, should this or that same word be employed in ever so many hundred *places*, one and the same explanation serves for all of them: care having all along been taken to apply the explanation to every such passage, to the end that it may be found conformable to the sense, intended in each such passage to be conveyed.

So moderate will the number of these *essential* terms—these *expounded* words—be found, that the labour, necessary to the giving correctness and consistency to the part of the language, the import of which is thus fixed,—fixed by authority of law,—needs the less be grudged.

IV. To the *Penal* Code, belongs an ulterior distinction peculiar to itself:—matter descriptive of the offence in its *ordinary* state, and matter indicative of the several causes of *justification*,* *aggravation*,† and *extenuation*,‡ with the grounds of *exemption*§ from punishment, which apply to it.

From beginning to end, one object kept in view and aimed at, is—that the whole field of legislation being surveyed,—surveyed and travelled through, over and over again, in all directions,—no case that can present itself shall find itself unnoticed or unprovided for. Of this object the compleat attainment may, perhaps, be too much for human weakness: but

* Examples—*Consent*, *Self-defence*, lawful exercise of *public* power, lawful exercise of *domestic* power, &c.

† *Premeditation*, *Confederacy*, &c.

‡ *Unintentionality*, *Provocation* (contemporaneous or recent) &c.

§ *Insanity*, *Infancy*, &c.

by every approach made towards it, the science is advanced ; and, in all shapes, the security of the people against suffering,—sudden and unlooked for suffering,—is encreased.

V. *Promulgation-paper*:—for formularies of all sorts,—*Conveyances* and *Agreements*, as well as instruments of Judicial *procedure*,—*paper*, of a particular *size* and *form*, and *appearance* in other respects, provided ; with a *margin* of letter-press, in and by which, in the instance of each such species of instrument, intimation is given of the whole text of the law, relative to the species of transaction therein in question : intimation,—viz. according to the quantity of room occupied by it, given, either *in terminis*, or in the way of *abstract*, with indication of, and with reference to, any such portion as is found to occupy too much room to be given *in terminis*.

In particular, to the whole business of *Conveyances* and *Agreements* would thus be given a degree of simplicity, certainty, and security, of which, even after the many improvements which, I am certain, must have been made in all the United States, upon the original chaos, no adequate conception would, I believe, be readily formed, antecedently to experience.

In and by this method, one useful result is looked for, and I hope provided for; viz. that to such persons, by whom, in respect of its *matter*, the work may, in this or that part of its extent, be disapproved, yet, in respect of its *form*, it may still be found of use. Seeing the *reasons*, in which the proposed provision has found its support and final cause, each such disapprover will thereby have before him such a view as, I hope, will not be an indistinct one, of the force with which, in the shape of reason and argument, he has to contend. On the one side (he may, in this case, see cause to say) *this or that reason seems defective; and taken all together, the whole mass of reasons appear insufficient and inconclusive: or, on the other side, the nature of the case affords such or such a reason, no mention of which is, in this work, to be found.*—Thus it is, that, even where the reasoning may appear erroneous or inconclusive, and the proposed provision improper or inadequate,—even in these places, if the matter be stated with that *clearness*, which it has been the object of the workman to give to every thing that ever came from his pen, and which, on the occasion in question, would, in a more particular manner, be the object of his endeavour and his hope,—even his *errors* may, by serving or helping to bring to view the

opposite truths, be found not altogether devoid of use.

In this way it is, that, both in point of *matter* and in point of *form*, his endeavour would be to give to the work such a character and complexion, as shall be found correspondent to the progress made, in these our times, in every other line of useful science: to the end that, neither in the whole nor in any part,—in matters of law any more than in matters dependent on mechanical or chemical science,—shall the lot of the inhabitants of your part of the globe, be, in future, determined by the unexperienced and ill-considered imaginations of primæval barbarism.

As matters of law stand at present, in *your* country, Sir, (not to speak of *ours*) on what sort of basis is it that every man's dearest and most important interests stand, or rather fluctuate?—On some random decision, or string of frequently contradictory decisions, pronounced in this or that barbarous age, almost always without any intelligible *reason*, under the impulse of some private and sinister interest, perceptible or not perceptible, without thought or possibility of thought, of any such circumstances or exigencies, as those of the people, by whom

the country here in question is inhabited at the present time: pronounced by men, who, if disposition and inclination depend in any degree on private interest, were as far from being *willing*, as from being, in respect of *intelligence*, *able*, to render their decisions conformable to the interests, even of the people, by whose disputes those decisions were called for, and whose situation alone it was possible that, in the framing of those decisions, they should have in view:—even of the people of those several *past* ages,—not to speak of those of the present age, or of ages yet to come.

Since the year in which the work edited by Mr. Dumont, was published in French, at Paris,—viz. the year 1802,—that same language has given birth to two *authoritative codes*, the one already a *Pannomion*, or at least designed to become such, published by authority of the *French Emperor*; the other, confined as yet to the *penal* branch, published by authority of the *King of Bavaria*. In both instances, the compositors have done me the honour to take into consideration and make mention of that work of mine. On the proposed occasion in question, I should not fail to make correspondent return, and make my best profit of *their* labours.

The examination of them is what I have as yet postponed, waiting for some particular occasion, by which such examination might be applied to some particular use. But to warrant a man in pronouncing, and with confidence, that, in and by each of those works, a prodigious benefit has been conferred on their subjects by their respective sovereigns, it is not necessary to have read so much as a single page. Executed as well as the nature of men and things admits of its being executed, no other literary work can vie with it in usefulness:—executed in the very *worst* manner in which, in the present state of society, it is at all likely to be executed, it can scarcely, when compared with the chaos to which it comes to be substituted, fail to be productive of clear profit in the account of use.

Of some of the *leading features*, by which the work *here* proposed, would be distinguished from both *those*,—a work composed for the use of men who are in use not only to think, but to speak and print what they think, from works composed for the use of men who scarcely dare speak what they think, and to whom it has been rendered impracticable to print what they think—a slight sketch, Sir, has just been laid before you.

I. For securing the aptitude of it in point of *matter*,—in the *proposed English* work, the *rationale* above described: in neither of *those French* works, any security at all, in this shape or any other.

II. For securing the aptitude of the work in point of *form*,—for securing to it the maximum of *cognoscibility*—and thereby the advantage of producing, to the greatest extent possible, in respect of number of *observances* compared with number of *non-observances*, whatever effect it purposes to itself to produce, in the proposed English work—1. Division into General Code and system of particular codes. 2. Division of the tenor of the law throughout into *Main text* and *Expository matter*. 3. In the Penal Code (not to insist on any such division as the usual and already familiar one, into *general titles* (titles of general application) and *particular titles* (each applying exclusively to a particular species or tribe of offences.) 4. Division of *Main text* and *Expository matter* together, into *definitional* matter, descriptive of the *main body* of each offence, and *modificative* matter, indicative of the several causes of *justification*, *aggravation*, *extenuation*, and *exemption*, which apply to it.

III. For securing, on every imaginable occasion, actual and perfect *notoriety*,—to each new set of rights acquired, and correspondent obligations contracted,—viz. by whatsoever *instruments* of conveyance or agreement contracted, and *that* not only *as soon as* contracted, but also *before* contracted, and thence before the time when repentance would come too late,—in the proposed English work, the already described *Promulgation paper* :

In neither of those French works, for the necessary *cognoscibility* and *notoriety* above described, is any security at all, in any of the just above mentioned shapes, or in any other shape, either declared to be given, or discernible.

Here, Sir, you see, was a *memento* given ;—it was not put to use:—here was even a *gauntlet* thrown down;—it was not taken up. Circumstanced as those respectable and truly useful servants of the public were, causes for such abstention might, without much difficulty, perhaps, be found:—causes which it would, however, be more easy to imagine, than useful to express.

That, in the United States, any similar, or any other causes should be found, found not

only operating, but operating with effect, to the neglect of all those securities for the adaptation of law to the only useful *ends* of law,—is a result, the bare possibility of which cannot, by a feeling mind, be regarded with indifference.

The encouragement, not only stipulated for, as above, but demanded in advance, is a gem of too high a price, to be cast, either *into* the sea, or *across* the sea, without thought, or without such prospect of a suitable return as the nature of the case admits of.

Of the presumable fitness of any person for the execution of a literary work proposed by him, no evidence so apposite can, I suppose, be looked for, as that which is presented by a work or works, where any such happen to be in existence, taking for their subject the subject itself which is proposed to be taken in hand, or any part or parts of it.

An assortment, as nearly complete as could be formed, of such of my printed works, as have taken for their subject any part or parts of the field of legislation, accompanies this letter, and solicits the honour of your acceptance. They are the fruit of above forty-five years de-

voted to the study of the science, and for little less than the whole of that time, without a view to any thing but the improvement of it.

If to a discerning mind, such as that to which this offer considers itself as addressed, any such *loose presumptions*, as are capable of being afforded, by tokens of attention and approbation, given by foreign authorities, can be of any use, it can only be by *contributing* to produce, should such be the result, a recurrence to the only *direct* and *proper* evidence—viz. the works themselves.

Citizenship of France, decreed by one of the National Assemblies, on the same occasion on which the like mark of approbation was bestowed on *Joseph Priestley* and *Thomas Payne*. In one of the Legislative Assemblies held during the consulate of the present Emperor, eulogium pronounced by one of the Members on the above-mentioned work, and printed in the official paper—Nomination (though by subsequent incidents rendered fruitless) to the then existing *Institute* of France—Translation of that same work, made by order of the *Russian government*, and published in the *Russian language*, besides another published in the same language without authority—Translation of

another work, viz. one on the mode of providing for the *Poor*, made and published during the *Consulate* by the municipality of *Paris*, and (if I have not been misinformed) *since* put, in some shape and degree or other, to public use—these tokens, together with the notices taken, as above, in the *French* and *Bavarian* Codes, may, it is hoped, have the additional good effect, of rendering it pretty apparent, that governments of the most *opposite* forms and characters, have found something to approve, nothing considerable to disapprove, and nothing at all to be *apprehensive of*, in the *views* and *dispositions*, with which the task here proposed, would be taken in hand.

In a man's writing, the character of the *moral* part is not so clearly delineated, as that of the *intellectual* part, of his frame.

Artifice, in pursuit of some private end, might give birth to an offer such as the present, unaccompanied with any such intention as that of giving effect to the engagement sought: *levity*, though pure from original insincerity, might intervene at any time, and be productive of the same failure.

On the question concerning *intellectual* ap-

titude, the evidence lying before you, the judgment, Sir, will be your own. As to what regards *moral* promise, the nature of the case refers you in course to the Gentleman, be he who he may, who in this country, stands charged with the affairs of your state. Transmitted to him, your letter, I mean the necessary *letter of authorization* above stipulated for, may, according to the result of his inquiries, be delivered or kept back.

§. II. *Advantages promised.*

As to the *advantages* that promise to result from the *gratuitousness* of the proposed service, though there is not one of them, that seems much in danger of escaping the observation of the distinguished person to whom the proposal is addressed, yet, as it will naturally have to pass through a variety of hands, in all of which it can not promise itself exactly the same degree of attention, it may not be amiss that these features of recommendation should in this place be distinctly brought to view.

1. In the first place, no *pecuniary* charge whatever being to be imposed on the public or any part of it, the great and prominent objec-

tion which public works in general have to encounter, has here no place:—and be the chance for useful service rated ever so low, still, should any the smallest portion be reaped, it will be all clear gain.

2. By supervening *imbecility*, by *death*, or even by *levity* and *caprice* on the part of the proposed workman, should the work be left in a state ever so far from *completeness*, still, to the public, there would be no positive loss: the situation in which in this respect it would find itself, would, at the worst, be but what it is at present—be but what it would have been, had no such proposal been ever made.

3. On these terms, the situation of the workman stands altogether out of the influence of any sinister motive, from which either an undue *protraction* of the business, or an undue *acceleration* of it, might be apprehended:—*protraction*, as if a salary were given, to be received during the *continuance* of it: *acceleration*, as if it were a sum of money to be once paid, or a life-annuity to commence, at the *completion* of it.

4. In respect of the *commencement*, and so far in respect of the *completion*, of the work, it

admits of a degree of promptitude, the want of which might otherwise be fatal to the whole design. If *money* were necessary, consents,—I need not set myself to think or to inquire in what number—would be requisite to be obtained—obtained not only for the fixation of the sum, but for the origination of the measure, and, therefore, if not for the giving of *any* answer, at any rate for the giving any definitive and sufficient answer, to this address. As it *is*, a single *fiat*, a letter, how short soever, from the authority to which this address is made, suffices for giving commencement to the work: and whatever subsidiary matters may hereinafter come to be suggested, may without inconvenience wait, in that case, all proper and accustomed delays.

5. It must, I think, be acknowledged to be a feature of no small advantage in any proposal, if it be such as to clear from all possible suspicion of sinister interest, all such persons to whom it may happen to take a part in the giving introduction or support to it.

To this sort of advantage, if there be any imaginable proposal that can lay claim, this, I think, can not easily avoid being recognized to be thus happily circumstanced.

With or without any particular individual, in the character of proposed workman in his eye, suppose the pre-eminent person to whom this proposal is submitted—suppose him bringing forward a plan, tending to the accomplishment of the proposed work, but accompanied with a plan of *remuneration* in the ordinary shape and mode. What would be, be he who he may, the *motives* to which the proposal would be referred?—referred, by adversaries at least, not to speak of friends?—they are by much too obvious to need mentioning.

Supposing it the good fortune of this proposal to obtain the sort of approbation which it aspires to, I have set myself to consider, by what *public tokens* it may be natural and proper for that approbation to declare itself.—The inability I have found myself under, of obtaining the documents necessary to secure me against falling into misconception, respecting such of the functions of your high office, Sir, as may be found to have application to the present case, will, I hope, in case of mis-supposal, obtain for me the benefit of your indulgence.

The steps, to any or all of which it may

happen to be taken in this view, present themselves to my imagination as follows:—

1. To lay the proposal before Congress at its meeting, with a *recommendation* to take it into consideration, stating or not stating, the provisional authorization given or intended to be given to the author.

2. To cause a *minute* to be made in the books of the President's office, stating a resolution, on the part of the *President for the time being*, to lay before Congress any such part of the work, as may have been transmitted during his continuance in office, together with a recommendation of the like operation, in the like event, to *future* Presidents.

3. To transmit a copy of this proposal, accompanied with the like recommendation, to the legislative bodies of each, or any, of the several particular *States*.

4. To cause it, on public account, to be printed and published by authority, as other public documents are in use to be.

For affording to me the necessary encour-

agement, any one of the above testimonies of approbation would, if notified to me by the President, be sufficient: but the greater the number of them that may come united, the greater of course, and the more operative, would be the encouragement.

Two things require to this purpose to be distinguished: 1. the *design* itself. 2. any work that may come to be presented by me in *execution* of it.

If, by any approbation bestowed upon the *design* itself, you were to be pledged for the like or any other tokens of approbation, to be bestowed on any *work* done in execution of this same design, this would be an objection against the bestowing any such provisional approbation on *the design itself*. When it comes, the work might appear ill adapted to its purpose, and, on that or any other account, not likely to be approved by the respective constituted authorities, on which the adoption of it would have to depend.

With submission, it appears to me, Sir, that, on the supposition that *the design itself* has met your approbation, it would not be a committal of yourself, were you to undertake for the forwarding, either to Congress or to the several

legislatures, for their consideration, *any work*, that shall have been transmitted by me, in execution of *the design so approved*.

For, contrary to expectation, when produced; suppose the work to prove, in your judgment, to ever so great a degree absurd, and even ridiculous, nothing will there be to hinder you from saying so: wherever it goes, there it will lie: nor will it impose, on any person, any such trouble as that of taking it into consideration, unless some person or other should happen to be to such a degree impressed with the contrary notion, as to make the proper motion for causing it to be taken into consideration, as in the case of any particular law proposed in ordinary course.

As to *the expense of printing*—to any such extent as in the different cases may appear requisite, an expense so moderate would hardly, I should suppose, be grudged by those to whom it belongs to judge: if it should, it would not be grudged by *me*.

§. III. *Objections answered.*

Against an enterprize of the sort in question, a host of jealousies and fears will naturally be springing up and arming themselves with ob-

jections. To such as appear best grounded, or most plausible, I proceed to submit such answers as the nature of the case presents to me.

Objection the 1st.—*Disturbance to property, and other existing rights.*—“What?” (cries the man of law) “remove our land-marks? revolutionize our property? throw every thing into confusion?—Is this what you would be at? and is this to be the practical fruit of these fine theories of yours?”

Such, Sir, if not where *you* are—such at any rate would be sure to be his language *here*.

My answer is—so far as the objection confines itself to the law of *private rights*—when these and any other number of declamatory generalities in the same strain have been expended, the only real mischief which they hold up to view, is, that which is reducible to this one expression—to *existing expectations, disappointment, productive of the painful sense of loss.*

What then is this mischief, by the apprehension of which the proposed Pannomion is thus to be put aside?

It is the very mischief, under which it is *impossible* that,—for want of a written, and visible, and intelligible, and cognoscible rule of action, in a word, for want of a *Pannomion*,—the people in your country should *not* be *at present labouring*: the very *grievance*, from which it is the object of this, my humble proposal, to be admitted to afford them my best assistance towards working out their deliverance:—the principal grievance, which it would not only be the *object*, but, to a considerable degree, the *sure effect*, of a *Pannomion*, *to remove*.

Throughout the whole extent of the territory of *the United States*, (new-acquired dependencies excepted, in which matters cannot but be still worse), what is it that, at this moment, forms the basis of the rule of action? What but an ideal and shapeless mass of *merely conjectural* and essentially *uncognoscible* matter?—*matter* without *mind*, *work* without an *author*; occupying, through the oscitancy of the legislature, a place, that ought to be filled; and exercising in it the authority that ought to be exercised, by *law*?

Nullis lex verbis, a nullo, nullibi, nunquam—

Law, in no words, by no man, never, made:—

Law which, having had for its *authors*, not the *people* themselves, nor any persons chosen by the people, but the creatures, the ever removable and compleatly and perpetually dependent creatures of the *King alone*, (till *the Revolution* this was compleatly true, and even since it has not wanted much of being so) had, of course, for its main object, not the good of the *people*, but, as far as the blindness or patience of the people would permit, the interests—the sinister and confederated interests—of the *creator*, under whose influence, and the *creatures*, by whose hands, it was spun out:—

Law, blundered out by a set of men, who,—their course of operation not being at their own command, but at the command of the plaintiffs in the several causes,—were all along as completely destitute of the *power*, as, under the influence of sinister interest, they could not but be of the *inclination* to operate in pursuit of any clear and enlarged views of utility, public or private, or so much as upon any comprehensive and consistent plan, good or bad, in the delineation of the *rights* they were *confirming*, and the *obligations* they were imposing:—and which accordingly never has been, nor, to any purpose, good or bad, ever could have been, nor ever can be, the result of *antecedent* reflection, grounded

on a *general* view of the nature of each case, of the exigencies belonging to it, or the analagous cases connected with it: nor, in a word, any thing better than a shapeless heap of odds and ends, the pattern of which has, in each instance, been necessarily determined by the nature of the demand, put in by the plaintiff, as above:—

Law which, being, in so far as it could be said to be *made*, made at a multitude of successive periods, and for the use and governance of so many different generations of men,—men, imbued with notions, habituated to modes of life, differing, more or less widely from each other, as well as from those which have place at present,—would, even had it been well adapted to the circumstances and exigencies of the times, in which its parts respectively came into existence, have, to a considerable extent, been thereby rendered, not the *better* adapted, but by so much the *worse* adapted, to the notions and manners *now* prevalent, to the state of things *at present* in existence:—

Law, which, by its essential *form* and character, as above indicated, is, so long as it retains that form, altogether disabled from either giving to itself, or receiving from any other quarter, *improvement* or *correction*, upon a scale of any

considerable *extent*: which, even upon the *minutest* scale, cannot give to itself any improvement in the way of *particular utility*, but at the expense of *general certainty*: nor, even at that price, but by a course of successive acts of arbitrary power, productive, in the first place, of a correspondent succession of particular *disappointments*, followed, each of them in proportion as it comes to be known, by those more extensively spreading *apprehensions of insecurity*, which are among the inseparable concomitants and consequences of that ever deplorable, howsoever originally necessary and unavoidable, taint of iniquity, inherent in the very essence of *ex-post-facto* law.

Of *ex-post-facto* law did I say?—Yes: for that which by common sense, speaking by the mouth of *Cicero*, has been spoken of as the most mischievous and intolerable abuse, of which, in the form in which it is called *Written* or *Statute Law*, the rule of action is susceptible, is an abomination interwoven in the very essence of that spurious and imposterous substitute, which, to its makers and their dupes, is an object of such prostrate admiration, and such indefatigable eulogy, under the name of *Common* or *Unwritten Law*.

Of *unwritten* (for such is the term in use), but much more properly of *uncomposed* and *unenacted* law (for of *writing* there is, beyond comparison, more belonging to this spurious than to the genuine sort), of this impostrous law, the fruits, the perpetual fruits, are—in the *civil* or *non-penal* branch, as above; *uncertainty*, *uncognoscibility*, *particular disappointments*, without end, *general sense of insecurity* against similar disappointment and loss;—in the *penal* branch, *uncertainty* and *uncognoscibility*, as before; and, instead of compliance and obedience, the *evil of transgression*, mixed with the *evil of punishment*:—in both branches, in the breast and in the hands of the Judge, *power* every where *arbitrary*, with the semblance of a set of rules to serve as a *screen* to it.

Such are the fruits of this species of mock law, even in the country which gave it birth: how much more pregnant with insecurity—with unexpected and useless hardship—as well in the shape of *civil loss*, as in the shape of *penal infliction*, and non-prevention of crimes, must it not necessarily be, in a country into which the matter of it is continually *imported*: imported from a foreign country, whose yoke the American nation has, to all other purposes, so happily for both nations, shaken off.

Not that I am by any means unaware of the prodigious mass of rubbish, of which, on the importation of English Common Law into America, part was, on the change of place, naturally, or even necessarily, left behind, other parts, since the original importation, at different times, so wisely and happily cast out of it: *religiously persecuting laws, manorial rights, tithes, ecclesiastical courts*, in several of the States at least, distinctions between *law* and *equity*, secret *Rome-bred* mode of extracting testimony, I believe every where,—and so forth. Not that I am by any means insensible to the prodigious alleviation, which, from the removal of so large a portion of it, the burthen cannot but have experienced. But though, of the whole mass already imported, as well as of each successive mass, as they come respectively to be imported, there is, and will be, so much the less that needs to be *attended* to; yet, from the respective magnitudes of those several masses so imported, no defalcation ever has been made, or can be made. The consequence is, that what alleviation soever the burthen of the law has ever received, or can ever be made to receive, as above, viz. by successive patches of *statute* law, applied to the immense and continually growing body of *unwritten*, alias *common* law, is confined to the *matter*, leaving the *form* of it as immeasurable,

as incomprehensible, and, consequently, as adverse to *certainty* and *cognoscibility*, as ever.

Yes, Sir, so long as there remains any, the smallest scrap, of *unwritten law* unextirpated, it suffices to taint with its own corruption,—its own inbred and incurable corruption,—whatsoever portion of *statute law* has ever been, or can ever be, applied to it.

So far then as *disturbance* to existing *rights* is the disorder in question, the proposed operation, so far from producing or aggravating such the disorder, presents not only the sure, but the only possible remedy. Disturbance?—a state of disturbance,—of perpetual and universally extending disturbance—is the very state in which they have hitherto existed; have existed, and, until fixed and secured by the application of this sole remedy, are condemned to remain till the end of time.

All this while, incapable as, in respect of its *form*, it is, of serving, in any tolerable degree, in its present state, in the character of a *rule of action* and *guide to human conduct*, nothing could be much further from the truth, than if, in speaking of the *matter* of which English Common Law is composed, a man were to re-

present it as being of no use. Confused, indeterminate, inadequate, ill-adapted, and inconsistent as, to a vast extent, the provision or no-provision would be found to be, that has been made by it for the various cases that have happened to present themselves for decision; yet, in the character of a *repository* for such cases, it affords, for the manufactory of real law, a stock of materials which is beyond all price. Traverse the whole continent of Europe,—ransack all the libraries belonging to the jurisprudential systems of the several political states,—add the contents all together,—you would not be able to compose a collection of cases equal in variety, in amplitude, in clearness of statement—in a word, all points taken together, in instructiveness—to that which may be seen to be afforded by the collection of English *Reports of adjudged cases*, on adding to them the *abridgments* and *treatises*, by which a sort of order, such as it is, has been given to their contents.

Of these necessary materials, the stock already in hand is not only rich, but, one may venture to say, sufficient: nor, to the composition of a *compleat* body of law, in which, saving the requisite allowance to be made for human weakness, every imaginable case shall be provided for, and provided for in the best manner,

is any thing at present wanting, but a duly arranging hand.

Objection 2. *Foreign Yoke.*—*It was to free ourselves from the yoke of foreign law, that we took up arms against the Monarch of England; and shall an obscure subject of the same nation fasten another such yoke upon our necks?*

It may perhaps appear an idle precaution, to bring to view, in the character of an objection capable of being urged, an observation so palpably void of substance. But it is not always by the most rational argument that the strongest impression is made. At any rate the answer will, I flatter myself, be found sufficient.

1. The yoke, the foreign yoke, is already about your necks: you were born with it about your necks.

What your proposed scribe does, if he does any thing, is to facilitate to you the means of relieving yourselves from it.

2. Year by year, or rather *term* by *term*, that is, *quarter* by *quarter*, the mass and burthen of it receives, at present, its increase. What he does, if he does any thing, will be to help to relieve you from such increase.

3. By him, let him do what he may, no yoke will be imposed; nothing, like the imposition of a yoke, either done, or so much as attempted. By him, let him do what he may, no act of power will be performed, not any the minutest particle of power exercised. The honour for which he is suing, is that of being admitted to work in the character of a servant. Labour alone will be *his* part: acceptance, rejection, alteration, decision, choice, with as much or as little labour as it may be your pleasure to bestow upon it, will be *your's*.

Yes:—if, to have part in the governance and plunder of you for seven years, he were to be occupied in cringing to you, and in flattering you, for as many days or weeks, then indeed there *might* be power for him to exercise, then indeed there *might* be a yoke for you to take upon you, and for him to impose:—but any such authority is not more compleatly out of his reach, than it is, and ever would be, out of his wish.

4. In suing to be thus employed himself, it is no less opposite to his wish, than above his power, to exclude from the same employment any of yourselves.—But of this a little further on.

Heavy or light, by your own hands, if by any, will the burthen, if any, be imposed.

5. Innumerable are the yokes,—the additions to the existing foreign yoke,—by which, until you take this only method of securing yourselves against all such nuisances, the burthen, you *now* labour under, will continue to be *increased*.

Not a year, not a quarter of a year, but, here, in this country, fresh loads are produced of the excrementitious matter, of which this burthen is composed. Of this matter, this or that portion, will it; or will it not, by such or such a time, have, in your country, begun to swell the load?—Upon arrivals or non-arrivals—upon winds and waves—upon good or ill-humour between the two nations—will even *possibility* depend in the first place.

Let *possibility* be now converted into fact. The produce of the last twelvemonth, or of the last quarter, or such other portion as accident may have determined, is now arrived. Upon whom, on the occasion of each cause, will the acceptance or rejection of it, and of each particular portion of it, depend?—Upon yourselves all together?—upon your appointed legislators?—upon the aggregate of all your legislative bodies?—or, upon any one of them? No: but, on each particular occasion, upon the will of

some one or other such small number of yourselves, acting as Judge or Judges.

Take for example any one such Judge, upon this or that case, that chance has brought before him, this or that English decision (let it be supposed) bears ; will it, or will it *not*, be taken by him for his guide?—On contingency upon contingency depends the answer.—The last cargo, has it, in the whole, or any part of it, come into his hands, or under his cognizance? if not the whole, but a part only, *what* part? The case produced to him, will he, or will he not, pay regard to it? Yes or no depends—(for I see not how it should fail of depending)—altogether upon his good pleasure. If it be such as suits his views, he makes use of it: if it be such as does not suit his views, he turns aside from it.

6. Innumerable—and many of them still more obscure than your proffered servant—are the workmen, who, in this country, and at present, bear, each of them, a part, in the fashioning of these successive accretions to this your foreign yoke.

At present, under the existing system of blind and sheepish acquiescence, who are they, who

thus,—in conjunction, in each instance, with this or that Judge,—become respectively the arbiters of your fate? Speaking of individuals, to say *who*, is, in any instance, impossible: speaking generally, a Judge, or bench of Judges, nominees of a foreign monarch;—or, to speak more correctly, as well as particularly, a mixed yet uncommunicating multitude, composed of *Judges, Advocates, self-appointed Note-takers, Law Report Writers, Law Treatise-makers, Law-abridgment makers*, and publishing *Law-booksellers*.

Suppose, on the other hand, the proposed work executed, the proposed *Pannomion* compleated;—in what state would the rule of action be among you in that case? Comprised it would be, the *whole* of it, in a small number of volumes; the *part* necessary to each man in particular in some *one* small volume:—the whole heap of foreign lumber, existing and future contingent, as compleatly superseded, rendered as compleatly useless, as an equal quantity of *School Divinity*, or *Rome-bred Canon Law*.

Wide, in this respect, is the difference between a situation, in which not a particle of *labour* has place without a correspondent par-

ticle of *power* attached to it, and a task which would have to consist purely of labour, without any, the least particle of power attached to it.

But, though thus bare of power would be the service in question, if rendered by an obscure and unknown *foreigner*, the case not only might be, but naturally would be, very different, if a service of the self-same nature were to find the performance of it lodged in the hands of a *native*. In *that* case, whatever *reputation*, and consequent *influence*, it might happen to a man to obtain by the execution of it, would, in his situation, and for his benefit, convert itself into so much *power*. In power, in short, not only would the performance of the service *terminate*, but it is in power that the choice of the person for the performance of it would have *originated*. If, therefore, the business finds itself in the hands of a foreigner, there will be at least *this* advantage, that the judgment to be pronounced upon it will stand so much the clearer of the influence of local, as well as personal, enmities and partialities, and the work stand so much the better chance of being judged and decided upon, on the ground of its own intrinsic merits,—its own fitness for the intended purpose.

Discussions of this sort do not, it must be confessed, shed any very brilliant lustre upon human nature;—but so it is, that we are constituted: and, being thus constituted, it is impossible for us to act either prudently or beneficially, any further than as we know ourselves for what we *are*.

As to *local* jealousies, to my eyes, dissension, be the seat of it where it may, is never a pleasing object. But, though in some measure it depends on a man's choice what objects he shall *fix* his eyes upon, it depends not altogether upon his will, what objects shall *pass before* them.

By the words *northern* and *southern*, if my eyes or my memory do not deceive me, one cause of division, more or less active, has been indicated, as having place, and more or less frequently manifesting its influence, in your confederacy. Supposing this to be so, what is then the consequence? For public service in this or any other line, if a member of the southern division presents himself, or is held up to view, jealousy and opposition gather in the northern regions: and so, *vice-versâ*.

Another source of division, though to my

unpractised eye not so clear and intelligible as the foregoing, is that which is brought to view by the words *democrat* and *federalist*.

Under these circumstances, be the nature of the work ever so uninviting, if a hand were to be offered for it, from one of the sides distinguished as above, in the natural course of things, it would find on the other side, hands drawn up in array, and prepared, if possible, to repel it. Such at least would be the case *here*. Such, in a word, would be the case (for such has ever hitherto been the case) wherever there have been *parties*:—wherever there has been either *liberty*, or the appearance of it. If to this rule the land of the United States afford an exception, it is a land—not of men, but angels.

Such then are the perils, which a work of the sort in question would have to encounter, if proposed for a *native* workman: perils, which, in proportion to the utility of the work, would, it is apprehended, be more likely to receive increase than diminution: from these perils, at least, it would be saved, by acceptance given to a remote and foreign hand.

Objection 3. *Foreigner's necessary ignorance.*
 —A foreigner, by whom the territory has not, any part of it, ever been, or ever will be visited,—who, with the population, with the territory, or its local peculiarities, never has had, nor proposes ever to have, any, the least personal acquaintance,—a person so circumstanced,—a person thus ignorant—unavoidably and incurably ignorant—of so many necessary points of knowledge,—is he a person who, with any propriety, can be looked to for any such service?

1. To this question, one answer may be given by another question. The *legislators*,—such as they are, to whose combined exertions the loads of *writing*, of which our and your *unwritten* law is composed, owe their existence,—have already been laid before you, and brought under review :—*our* advocates, *our* judges, *our* note-takers ; *our* report-makers, *our* treatise and abridgment-makers, *our* publishing law-book-sellers. By how many of all these functionaries has the legislative system of the United States been ever studied—been ever so much as thought of—or the country visited?

2. Another answer is—that, upon a closer scrutiny, the points, which present a demand for local knowledge, would not, it is supposed,

be found to cover, in the field of law, so great an extent, nor yet to be so difficult to discriminate before hand, as, upon a transient glance, general notions might lead any person to imagine.

3. Nor, if I may venture to say as much, would it be easy to find any person, more compleatly aware of the demand, presented by the nature of the case, for attention to those local exigencies; nor more compleatly in the habit of looking over the field of law in this particular view.

Of this disposition, and this habit, exemplifications of considerable amplitude may be seen, in the already mentioned work, which, for these nine years, has been under the public eye: and by that work, Sir, I am saved from the need of attempting on the present occasion, to give you any further trouble on this head.

Thus in the case of *penal* law. Of the *genera* of offences,—as distinguished or distinguishable by their *generic* names—*Murder*, *Defamation*, *Theft*, *Robbery*, and so forth,—definitions may, for the most part, be the same all the world over.—But for *particular species*, occasion may be afforded, by particular local cir-

cumstances:—and so in regard to causes of *justification*, *aggravation*, *extenuation*, or *exemption*, with demand for corresponding varieties, in respect of *satisfaction* or *punishment*:—And so in regard to *contracts*.

Accordingly, in any draught which I should draw, care would be taken, not only to keep the distinction all along in mind, but to keep pointed towards it the attention of all those, to whom in dernier resort it belonged to judge.

4. I say *to those to whom it belonged to judge*:—for, as it never would be by myself, neither by any one else let it be forgotten,—that, of any body of proposed laws, to which it may happen to have been drawn up by the proposed draughtsman, there is not any part, of which the legislative bodies in the several United States, will not take, each of them according to its competence, perfect and effectual cognizance: cognizance no less perfect and effectual, than what has been taken of any other portion of the matter of law, to which their sanction has respectively been given or refused.

Whatsoever therefore may, in relation to the local points in question, be the *ignorance* of the proposed and supposed foreign draughts-

man, and, in his draught, whatsoever may have been the *errors* produced by these ignorances,—all such errors will, for their correction, have the same instruments and opportunities, as any other errors that ever have been, or may ever come to be made and corrected.

5. Not but that, on this, as on most other occasions, it is more to be desired, that errors, of whatever kind, should, particularly in such a work, have never been made, than that, having been made, they should be corrected:—and, by original *exclusion*, not only the time and labour necessary to *correction* would be saved, but the danger of *non-correction*—of their *not* being corrected—avoided.

Objection 4. *Shame of being beholden to a Foreigner.*

But a *foreigner*—how necessary soever the work itself may be—would it not, to American citizens, be matter of just shame, to see a foreign hand entrusted with, or so much as employed in, the execution of it?—America, the whole population of United America—the eight or nine millions, or whatever may be the amount of it—among such multitudes of hands, constantly occupied in the business of legislation,

does it not contain so much as a single one, competent to such a task?

A question this, which will be apt to appear much more within my competence to *put*, than to find an answer for.—I shall venture, however, to submit answers more than one.

1. In the first place, what I believe is certain, is—that, whatsoever number of persons thus qualified, may, at this time, be in existence, no one such person has as yet, at any time, made himself known as such, or been recognized as such.

2. In the next place,—be the number of persons, in an equal, or by any amount superior, degree, competent to the task in question, ever so great,—of the offer here submitted, it is no part, either of the design, or tendency, to deprive the *United States* of the services of any one. On the contrary, among its tendencies is that of calling forth into action, to this very purpose, and on this very occasion, whatsoever qualifications or capabilities, of the kind in question, may happen to be in existence.

3. Of this sort of national jealousy, if the effect be to call forth into existence any com-

petitors, who would not otherwise exist, so far at least, if the sort of work, supposing it well executed, be deemed a useful one, in such case as well the utility of this offer, as the propriety of giving acceptance to it, will be out of dispute: and, in such a competition, the danger that the work of a perfect stranger should, to the prejudice of local interests and influences, obtain an undue preference, will hardly appear very formidable.

4. If, on the other hand, it should happen to it, either to be the only work produced, or, finding rival works to contend with, to be really, in the judgment of the competent judges, thought better adapted than any other to the intended purpose,—in either of these cases, any such supposition, as that, on the occasion of such a work, these same judges would see their country less well served, or not served at all, rather than see it served by a foreign hand,—and that accordingly, they would put it in the power of any foreigner, to preclude them from the benefit of a good body of law, or so much as of a single good clause in a law, merely by being the first to propose it, is that sort of supposition, which, if seriously made, would not, I imagine, be, very generally, well received.

5. Whatsoever disposition toward jealousy it might happen to an offer of this sort to have to encounter, a man, of whom it were perfectly known, that in person he could never be *present*, to give to any one the sort of offence which such a disposition supposes, should naturally, on this supposition, present such a ground for acceptance, as should give him, on this one score at least, the advantage over a native. On affections of this kind, distance in respect of *place*,—especially when the continuance of it is certain,—produces an effect intimately analogous to, and little different from, that of *time*. In the present case, were the proposed workman already numbered among the dead, he could not be more effectually placed out of the sight of the people, and in particular of the constituted authorities, in whose service it is his ambition thus to place himself, than, to the day of his death, he would find it necessary to remain, if this his offer found acceptance.

6. So far from operating as an objection, at least in the mind of any gentleman who fills the high station to which this offer is addressed, what I should expect is—to find this very circumstance of foreignership placed,

and on this very score, to the account of advantage.

There are certain situations, and those highly important ones, for the filling of which it has been a known maxim among republican states, to resort to foreigners in preference to natives. Among the Italian Republics, this sort of policy was applied—sometimes by usage, sometimes by positive law—not only to the subordinate situation designated among us by the title of *Judge*, but to that of *Podesta*: a sort of supreme Monarchical Magistrate, to whose power, while it lasted, it seems not very easy to assign any very distinct limits.—My books are not at present within my reach: but in the case of the *Podesta*, instances, more than one, will be found in Sismondi's lately published history of the Italian Republics: and, in the case of *Judge*, I have read laws to that effect in the codes of Italian states, more than one: and if I do not misrecollect, these instances, or some of them, are mentioned in the “*Defence of the Constitution of the United States*,” by Mr. Adams.

Of this preference the cause—the efficient cause—seems manifest enough. For any of those great and enviable situations, seldom

could a man, whose character was such as to afford him any chance of finding acceptance, offer himself, without raising up against himself, besides a band of rivals, a much larger host of adversaries.

Nor was the *justificative* cause—the *reason*—much less clear or impressive. In any such powerful situation, no *native* could seat himself, without bringing into it, in his bosom, a swarm of sinister interests, prejudices, and partialities.

§. IV. *Advances already made towards the Execution of the proposed Work.*

The degree of *advance* already made by my labours in the field of legislation—and the order of *priority*, in which, if undertaken, the several distinguishable parts of the *Pannomion*, would be proposed to be executed—these seem to be of the number of the topics, on which something will, on such an occasion, be expected; and on which accordingly it will not be allowable for me to be altogether silent.

On these topics, on the other hand, any considerable *details* would, if comprised within the compass of this paper, swell it to such a bulk,

as to subject to too great a degree of uncertainty its prospect of finding a reader, in the exalted and busy station to which it is addressed.—

The point for your consideration, Sir, supposing the work in itself a desirable one, will, unless I misconceive the matter, be found to be—whether if this proposal should be passed by without acceptance, the rejection would leave an adequate probability of seeing the work executed, at any future period, and under other circumstances, to equal advantage?—and, in particular, whether there be any such probability, that any *other* person will arise, who having, without receipt or prospect of pecuniary retribution, made equal advances in the prosecution of such a design, shall, upon the same desirable terms, be ready to undertake to do what depends upon him towards the completion of it?

To enable you to afford to yourself a proper answer to these questions, the following statements, compressed as they are, and consequently, in a proportionable degree, deficient in point of specific information, may yet perhaps be found to suffice.

1. In regard to the *Penal Code*, the work is already in a state of considerable forwardness. That it was so, so long ago as the year 1802, —not to speak of a much earlier period,—may be seen from the work edited in that year in the French language by *Mr. Dumont*.—What may be seen upon the face of that work is indeed a *sample*; but it is no more than a sample: a great deal more had even then been executed than is there exhibited; perhaps the greatest part of the whole:—a few months would, if I do not much miscalculate, suffice for the completion of it—I mean *in terminis*.

2. As to the *civil* code, in the adjustment of the *terms* of it, but little advance has been made: but, in respect of *leading principles*, of which in regard to *form* as well as matter, a pretty ample view may in that same work be seen, they have long ago been settled.

3. Of the subject of the *Judicial Establishment*—(the *Judiciary* is, I think, the more concise denomination it goes by with you,)—a pretty full view may be seen in the printed, but never yet published, papers drawn up about the year 1790, on the occasion of the French Revolution: copy herewith sent, as per list. To

adapt it to the purpose of the United States, if the system actually in force there should be regarded as susceptible of improvement, would of course require considerable modifications.

4. As to *procedure—judicial procedure*,—in the adjustment of the principles of *that* branch of the law, considerable progress was necessarily made, of which the result was brought to view, and may be seen in the course of the inquiry made into the subject of the correspondent part of the *Official Establishment*, as above.

Since that time, farther advances were made, and presented to view in the work intituled *Scotch Reform, &c.* published Anno 1806: copy herewith sent.

In addition to this, a work, compleat, or nearly so, on the subject of *Forthcomingness*—viz. on the most effectual, and in other respects most proper, means to be employed for ordering matters in such sort that, whether for the purpose (as they say in French) of *justiciability*, (I mean being placed at the disposal of the judicial authorities,) or for the purpose of *evidence*, (I mean being made to furnish evidence) as well all *things* as all *persons* requisite, shall, on each

occasion, be *forthcoming*, lies by me in manuscript.

5. The subject of *Evidence* has been examined in its whole extent, and sifted to the bottom. A work of mine on this subject, under the title of *The Rationale of Evidence*,—enough to occupy two moderate-sized quarto volumes,—has been for some time in the hands of another friend of mine, and will be in the Printer's hands, in the course of about two months.—

For drawing up a code *in terminis*, grounded on the principles there laid down, very little time would suffice.—Of the customary *exclusionary rules*,—rules, which are not, in the law of any country, either *consistent* with one another, or *adhered to* with any tolerable degree of constancy,—the place would be mostly occupied by a set of correspondent *Instructions*:—Instructions, from the *Legislator* to the *Judge*, pointing out, *inter alia*, as causes of *suspicion*, those circumstances which, in general, are employed in the character of causes of *rejection*—absolute and inexorable *rejection*.

On several subjects *not* included, as well as on several of those which *are* included, under the above heads, disquisitions may be seen in

the subjoined list of printed works. But, to the present purpose, no separate mention of them seems requisite.

The printed but never published fragment, on the subject of the *Art of Tactics* as applied to *Political Assemblies*, is but *one* Essay out of some *thirty* or *forty*, which were at that time written, and which, taken together, did not want much of having gone through the subject in its whole extent.

But this is a subject, which I should scarcely myself propose to include in the *Pannomion*. It is a subject, on which each political body will naturally feel itself disposed to *legislate*, or at least to *act*, according to its own views of its own *exigencies*; meaning exigencies considered with a view to the *public* good,—the good of that part of the *public service*;—not to speak of *particular interests* and *prejudices*.

As to *constitutional law*, I mean that branch which regards the mode of *appointing* the several public functionaries, with their respective *powers* and *obligations*:—with *you*, I believe, the appellation has a sense somewhat more extensive.—As to *constitutional law* thus explained, I mention it for no other purpose than to shew

that it has not been overlooked. In respect of the *matter*, no demand for alteration has presented itself to my view, nor should I myself be disposed to look out for any. In respect of the *form*, something might possibly be found needful to adapt it to the other parts.

But, though it were to be transcribed without the alteration of an iota, still, for symmetry and compactness, it might perhaps be of advantage, that it should go through the hands, by which the other parts were drawn up.

As to the *order* of operation—I mean as between the different *parts* of the proposed *Pannomion*—the *penal* Code is that which, I imagine, has already presented itself to your thoughts as the part which claims the first place. In respect of the *matter* of it, it is that in which the demand, for variation presented by *local* circumstances, will naturally be least extensive; and the comparative progress already made in it, would, in default of material reason to the contrary, be of itself sufficient to determine the preference.

I know not whether the *legal* circumstances of your recent territorial acquisitions, will be thought to add any thing to the reasons for accept-

ance. In the character either of *subjects* or *fellow-citizens*, you have to make provision for the *legal* exigencies of a new mass of population, differing from you not less in laws and customs than in language. In the state of these their laws, alteration in many points must already have been necessitated,—alteration in many others must be continually in contemplation. Besides the advantage of having the work done—whatsoever there may be of it to be done—upon an already considered and comprehensive plan, might it not, to the *new* citizens in question, be in some degree a matter of satisfaction, to learn that the preparation of the business was consigned to hands, for whose *impartiality*, there would be such a security as could scarcely have been in contemplation otherwise?

To contemplate the matter on the footing of *presumptions* merely,—and laying out of the case any such ground for acceptance as the works themselves may be found to afford,—I wish to be clearly understood, in what I say as to the *considerations*, which, in the present instance, may appear to operate in favour of the experiment, of receiving into the field of legislation the labour of a *foreign* hand. They are reducible to this simple circumstance,—viz. that of the existence of a person, by whom so

large a portion of time and study has been bestowed upon the business, coupled with the assumption that, neither in the *British Empire*, nor in the *United States*, does there exist that other person, by whom, upon any *comprehensive* plan, an *equal* portion of time and study—I might perhaps add *any* portion of time and study—has been employed—especially with any *ameliorative* views.

One thing I am ready to admit, and am fully assured of: and *that* is, that if, on *general* grounds, and setting aside any such *casual* opportunity, a resolution were come to in your country, to set about the drawing up a *Pannomion*, reasons for looking beyond the American States (I mean on the ground of abstract aptitude, and setting aside those which have reference to *local jealousies* and *partialities*) would not be to be found.

No, Sir;—not the smallest doubt have I, but that, if in both countries, a *Pannomion* were to be drawn up, and, in both countries hands were to be looked out for, in the class of practising lawyers, the hand of an *American* lawyer would, even for the use of *England*, present beyond comparison a fairer promise than that of a lawyer of the *English* school.

What this persuasion has for its ground, is—the observation of the improvements—the prodigious improvements—which, in *matter* and even in *style*, since its voyage to America, the law of *England* has received from *American* hands.

Laying out of the case those necessary changes, which, in the *constitutional* branch, have been produced by the emancipation, and the change in the form of Government—(subjects to which my attention neither has turned, nor is disposed to turn itself,) those which, on this occasion, I have in view, are those which, through the medium of such materials as I have been hitherto able to collect, I have had the opportunity of observing in the *penal* branch, in the *civil* branch, and in the system of *procedure*.

Among these, though there may be some, which, being the result of the change in the *constitutional* branch, could not, consistently with the existing constitutional system, be introduced into the mother country, yet there are others—and those the greatest part,—which, with as much advantage, and with as little inconvenience, might be effected in England, as they have been in the United States.

Accordingly, but for the adverse interest of professional men, and the lazy and the stupid confidence, or rather thoughtlessness, with which the bulk of the people have resigned their best interests into the hands of a class of men, who, in so far as affection is governed by personal interest, can never be otherwise than their natural and irreconcilable enemies,—long ago would these same amendments have been made in *this* country.

In America, the work could not fall into the hands of any persons, to whom the practice of *amendment* was not familiar:—who had not been in use not only to see amendments made—and made to a great extent,—but made with manifest and undeniable good effect: whereas, in *this* country (saving exceptions in too small a number to be mentioned) any such work would look in vain for operators, to whom the very idea of amendment was not an object of unaffected terror and undisguised enmity.

In this state of things, suppose any person, myself for example, after making up a list of *these amendments*, were to come forward with the proposal, to introduce the same amendments *here*:—what would be the reception it would meet with?—“ *Oh!—you want to repub-*

“*licanize us, do you?*”—This would be the cry set up by the men of law—echoed by all others (a countless multitude) who have any share in the profit attached to the existing abuses:—and in this cry would be found a full and sufficient answer. Foundation, it is true, it would have none. But, such is still the blindness and indifference of the people at large,—so bigotted their admiration, so prostrate their adoration, of their natural and implacable enemies and oppressors.

Such is the bigotry and indifference, which in this country is still prevalent. *How long* is it destined to continue?—This is more than, with any precision, a prudent man will venture to answer.—Thus much, however, I will venture to predict, viz. that before this century, not to say this half century, has passed away, this shame to *the British Empire* will likewise have passed away.*

* * * * *

* In the manuscript letter, as sent to the President, followed a paragraph or two, the brouillon of which cannot, at this time, be recovered. Nothing of moment is supposed to have been contained in it. To it was subjoined a list, as far as it could be then made out, of the author's printed works, edited and inedited. And of such of them as could then be procured, several being out of print, copies were therewith sent.

"license us, no more."—This would be the cry set up by the men of law—echoed by all others (a countless multitude) who have any share in the profit attached to the existing system—and in this cry would be found a full and sufficient answer. Foundation, it is true, it would have none. But, such is still the blindness and indifference of the people at large—so bigoted their administration, so preoccupied their education, of their national and individual wrongs and oppressors.

Such is the bigotry and indifference, which in this country is still prevalent. How long is it destined to continue?—This is more than, with any precision, a prudent man will venture to answer.—Thus much, however, I will venture to predict, viz. that before the century, not to say this half century, has passed away, this shame to the British Empire will likewise have passed away.*

* * * * *

* In the manuscript letter, as sent to the President, followed a paragraph or two, the omission of which cannot, at this time, be recovered. Nothing of moment is supposed to have been contained in it. To it was assigned a list, as far as it could be then made out, of the author's printed works, edited and finished. And of such of them as could then be procured, several blank out of print copies were therewith

sent.

J. M. G. P. Boston
March 11th 1840

No. II.

JAMES MADISON, *then President of the Congress of the American United States*, to JEREMY BENTHAM, *London*.

Washington, 8th May, 1816.

SIR,

I HAVE a greater debt of apology, I fear, than I can easily discharge, for having so long omitted to answer your letter of 1811. I flatter myself, however, that you will not do me the injustice to believe that the failure has proceeded from any insensibility to the importance of its contents, or to the generous motives which dictated it; and as little from a want of respect for the very distinguished character you have established with the world, by the inestimable gifts which your pen has made to it. It happened that your letter was received in the midst of occupations incident to preparations for an anticipated war; which was in fact the result of the anxious crisis.

During the period of hostilities which apparently became more and more uncertain in their duration, there could not be leisure, if there were no impropriety, in opening a correspondence. On the removal of these difficulties

by the happy event of peace, your letter was among the early objects of my recollection. But a variety of circumstances which it would be tedious to explain, deprived me of an opportunity of bestowing the proper attention on it, until the recent busy Session of Congress became a further obstacle, which has just ceased with the adjournment of that body.

On perusing your letter, I see much to admire in the comprehensive and profound views taken of its subject; as I do every thing to applaud, in the disinterested and beneficent offer it makes to the United States; and it is with the feelings naturally flowing from these considerations, that I find myself constrained to decide, that a compliance with your proposals would not be within the scope of my proper functions.

That a digest of our laws on sound principles, with a purgation and reduction to a text, of the unwritten part of them, would be an invaluable improvement, cannot be questioned; and I cheerfully accede to the opinion of Mr. Brougham, that the task could be undertaken by no hand in Europe so capable as yours. The only room for doubt would be as to its practicability, notwithstanding your peculiar

advantages for it, within a space and a time such as appear to have been contemplated.

With respect to the unwritten law, it may not be improper to observe, that the extent of it has been not a little abridged, in this Country, by successive events. A certain portion of it was dropped by our emigrant forefathers as contrary to their principles, or inapplicable to their new situation. The Colonial Statutes had a further effect in amending and diminishing the mass. The revolution from Colonies to Independent States, lopped off other portions. And the changes which have been constantly going on since this last event, have every where made, and are daily making further reductions.

To these remarks, I may be permitted to add, that with the best plan for converting the common law into a written law, the evil cannot be more than partially cured; the complex technical terms to be employed in the text, necessarily requiring a resort for definition and explanation to the volumes containing that description of law.

These views of the subject, nevertheless, should they have the validity attached to them, still leave sufficient inducements for such a

reform in our code, as had employed your thoughts. And although we cannot avail ourselves of them, in the mode best in itself, I do not overlook the prospect that the fruits of your labours may in some other not be lost to us: flattering myself, that my silence will have no wise diverted or suspended them, as far as the United States may have a particular interest in them. It will be a further gratification if it should experience from your goodness, the pardon which I have ventured to ask. Whatever may be the result, I pray you, Sir, to be assured of my distinguished esteem for your character, and of the due sense I entertain of your solicitude for the welfare of my Country.

JAMES MADISON.

J. Bentham, Esq.

P. S.—Be pleased to accept my thanks for the valuable collection of your works which accompanied your letter. I have directed a copy of Blodget's Tables, and of Hamilton's works, to be procured and forwarded to you; and will endeavour, as some further return for your favor, to have added to them a few other Publications.*

* May 30th, 1817. Unfortunately neither the publications here mentioned, nor any other communication of later date from Mr. Madison, nor any ulterior information respecting them or any of them, have as yet come to hand.

No. III.

ALBERT GALLATIN, *Minister Plenipotentiary from the American United States to the Court of London*, to SIMON SNYDER, *Governor of Pennsylvania*, introducing a *Letter from JEREMY BENTHAM to the said Governor*.

London, 18th June, 1814.

SIR,

MR. JEREMY BENTHAM intends to address you, for the purpose of making a gratuitous tender of his faculties and services, in preparing a code or system of *civil* and *penal law*, for the subsequent inspection and revision of the Legislature at PENNSYLVANIA. This object had at a former period called the attention of the State: and the late Judge Wilson was by the public appointment engaged for some time in that work. Its difficulty is almost equal to its importance, and seems to have prevented his subsequent attempts. So far as it is practicable, Mr. Bentham, having devoted near forty years to the investigation of the subject, and from his rare talent of analysis and classification, appears particularly fitted for the undertaking. I have ventured to say so much, because those of his works which have appeared in the most popular dress, happen to have been published in the French language. I allude to his “*Treatises of Legislation*,” and to his “*Theory of Rewards and Punishments*,”

edited by Mr. Dumont, and respectively published in the years 1802 and 1811. These works are generally considered as the best of the age on the subject of which they treat. Had not other avocations prevented, *I would have translated the shortest.* For a brief account of these, I beg leave to refer you to the Edinburgh Review. Those printed in English, Mr. Bentham intends I believe to send to you. Those against the *laws to forbid usury*, and against *taxes on law proceedings*, are perhaps the most popular. I would recommend the perusal of that entitled "*Scotch Reform*," as containing amongst other things, an able defence of the principle of the plan actually adopted in Pennsylvania, by the extension of the powers of justices of the peace, and the arbitration laws, but not known to the author, viz. the submitting in the first instance all litigations to a summary and natural mode of trial, *before resorting to the trial by jury.*

In most of these works you will however find peculiarities, both of matter and style, and some suggestions, which you will condemn as inadmissible or inapplicable. But you will be pleased to observe, that Mr. Bentham writes no more for power, than for money. The result of his labours will have no authority, unless sanctioned by the Legislature. Nor, from the method which is habitual to him, will there

be any difficulty in excluding parts, and modifying or adopting the residue. What he wants is the countenance of the State, so as to have a precise and practical object in view, and the certainty that his labours will not be lost, that his work will hereafter receive the consideration of the Legislature.

Feeling myself honoured by Mr. Bentham's application for this letter, thinking that Pennsylvania might, without risk or expense, be eventually highly benefited, and have the honour to take the lead in this most important general improvement, as she has already done in many of its details, and knowing your zeal for promoting all such attempts in our State,—I have embraced with pleasure the opportunity of addressing you, and of requesting you at the same time to accept the assurance of my high consideration. I have the honour to be,

Respectfully, Sir,

Your most obedient servant,

ALBERT GALLATIN.*

*His Excellency S. Snyder,
Governor of Pennsylvania.*

* Of Mr. Bentham's above-mentioned letter, the copy that was preserved not being at present accessible, cannot be inserted in this place: but in less than two months it is expected to be recovered; and whenever it is, it will, together with some other papers, hereinafter mentioned, relative to Russia and Poland, be printed and transmitted, to serve as a supplement to the present collection.

be any difficulty in excluding parts, and modifying or adopting the residue. What he wants is the countenance of the State, so as to have a precise and practical object in view, and the certainty that his labours will not be lost, that his work will hereafter receive the consideration of the Legislature.

Feeling myself honoured by Mr. Beatham's application for this letter, thinking that Pennsylvania might, without risk or expense, be eventually highly benefited, and have the honor to take the lead in this most important general improvement, as she has already done in many of its details, and knowing your zeal for promoting all such attempts in our State—I have embraced with pleasure the opportunity of addressing you, and of requesting you at the same time to accept the assurance of my high consideration. I have the honor to be,

Respectfully, Sir,

Your most obedient servant,

ALBERT GALLATIN.

His Excellency S. Snyder,
Governor of Pennsylvania.

Of Mr. Beatham's above-mentioned letter, the copy that was preserved not being at present accessible, cannot be inserted in this place; but in less than two months it is expected to be recovered, and whenever it is, it will, together with some other papers, hereinafter mentioned, relative to Russia and Poland, be printed and transmitted, to serve as a supplement to the present collection.

No. IV.

SIMON SNYDER, *Governor of Pennsylvania, to*
DAVID MEADE RANDOLPH, Esq. *Williams-*
burgh, Virginia, on the Subject of the above-
mentioned Letter of JEREMY BENTHAM.

Pennsylvania,

Harrisburg, 31st May, 1816.

SIR,

I HAVE to acknowledge the receipt of a letter which you did me the honour to write, and which came to hand a few days since. The books to which it refers I received in the winter of 1814-15 by the mail-stage, but unaccompanied by any letter or memorandum, explaining the object of their transmission; nor could I discover from the envelope, which was torn and much defaced, from whom or from whence they came. From the necessarily consequent state of incertitude I was not relieved until this last month, when I received a letter from Mr. Jeremy Bentham, written at Queen-Square-Place, Westminster, and dated July 14th, 1814, in an envelope, post-marked Philadelphia, 6th April last past; which informed me that I was indebted for the books to that distinguished Philanthropist, and which fully explained the object of the transmission. The

same envelope contained also a letter from Mr. Gallatin to me, and another from him to Mr. Bentham, both dated in July, 1814.

I have not in my view any ordinary occurrence that could have delayed the delivery of these letters so long a period after the receipt of the books to which they relate:—Mr. Charles Mifflin, who, as it appears from your letter, transmitted the books from Philadelphia, can probably explain to you or Mr. Bentham the cause of detention. If the letters had arrived previously to the 19th March last, on which day the Legislature of this State adjourned, an early exhibition to that body (comprising much useful talent, and many of its members having been long labouring to reform our jurisprudence) of his proposition, and of which I should promptly have availed myself, I am confident would have resulted in measures more commensurate with the object of furnishing him with information to aid, and better adapted to further his generous intentions towards Pennsylvania, than what is in my power to furnish: which can only consist in a transmission to him, by any conveyance that yourself or Mr. Mifflin will advise, of a copy of the laws of Pennsylvania, from the origin of the government to the present day,

and journals of legislative proceedings so far as in print;—these latter contain (though rather diffuse) as well a correct general history of Pennsylvania Legislation, as of the origin and progress of improvement from time to time in our jurisprudence:—also a copy of a Report by Jared Ingersoll, Esq. Attorney-general on criminal law, and a bill predicated thereon, consolidating and amendatory of our present code, but not yet finally adopted by the Legislature. On the subject of fundamental law, a copy of the Minutes of the Proceedings of the Convention, which framed the present constitution of Pennsylvania, shall also be furnished: likewise (if to be found in print) the Minutes of the Convention that framed the Constitution of 1776, and those of the Council of Censors, who acted under the authority of that instrument,—to which I will add such other publications as may appear useful.

Dallas's and Binney's Reports of Adjudications by the Highest Judicial Tribunal in the State, I presume will be essential; these are not for sale here, but can be procured by his agent at Philadelphia.

Aided by these muniments and publications, Mr. Bentham will be enabled by his talent and

research, to mature and shape his system for submission officially to the Legislature.* I prefer this course for the obvious reason, that Executive Suggestion proves not always a recommendation for the adoption, by a free Legislature, of the best digested, and speculatively most approved, propositions;—such are more frequently, perhaps sometimes unfortunately, passed over with silence, than acted upon by practical men, who, though the Representatives of a practically virtuous people, yet differ as widely about the means for effectuating the melioration of the condition of man, as differ their local situations, their pursuits, and consequent feelings and opinions.

That the result of the labours of his life, on the all-interesting subject of his letter, should be presented for consideration here, untrammelled by any suggestions and prescriptions of another, will be, I am persuaded, more acceptable to the Legislature, and more gratifying to the philanthropic Mr. Bentham: and if eventually I shall be the medium of communication,

* May 30th, 1817.—Unfortunately, neither the above-mentioned, nor any others from the respectable quarter in question, except the printed paper, from which an extract is given in No. V. have as yet come to hand.—J. B.

to give purely the emanations of his own mind, will relieve me from a sacrifice of feeling which I should be compelled to make, if his system had acquired the slightest feature from a hand so incompetent as is my own.

Be pleased, Sir, to make known to Mr. Bentham the contents of this letter, together with my sincere wishes for his personal happiness, and for the prolongation of his useful life.

For yourself, Sir, please accept assurance of regard.

SIMON SNYDER.

D. M. Randolph, Esq.

Williamsburgh, Virginia.

to give partly the emanations of his own mind,
 will relieve me from a sacrifice of feeling which
 I should be compelled to make, if his system
 had admitted the slightest restraint from a hand
 so independent as is my own.

the pleasure, Sir, to make known to Mr.
 Benjamin the contents of this letter, together
 with my sincere wishes for his personal happi-
 ness and for the propagation of his useful life.
 For yourself, Sir, please accept assurance of
 regard

SIMON SNYDER

Dr. M. Randolph, Esq.
 Williamsburg, Virginia.

I have the honor to acknowledge the receipt of your letter of the 10th inst. and in reply to inform you that the same has been forwarded to the proper authorities for their consideration. I am, Sir, very respectfully,
 Your obedient servant,
 Simon Snyder

No. V.

Extract from a printed Paper, signed SIMON SNYDER, dated Harrisburg, December 5th, 1816, JAMES PEACOCK, Printer, intituled GOVERNOR'S MESSAGE to the Senate and House of Representatives of the Commonwealth of Pennsylvania, containing seven pages. It came inclosed in a Letter from the said Governor to DAVID MEADE RANDOLPH, Esq. Williamsburgh, Virginia, and by him transmitted in a Letter dated from thence 18th Jan. 1817, and addressed to JEREMY BENTHAM, Esq. Queen's Square Place, Westminster, London, by whom it was received 29th March, 1817.

It commences with the words, FELLOW CITIZENS, &c.

In page 4, is a paragraph in the words following, viz.

“ This occasion is embraced to submit to
“ the Legislature a communication made to
“ the Governor by Jeremy Bentham, of London, on the subject of public law; which,
“ though dated 14th July, 1814, was not received until after the adjournment of the last
“ Legislature. As this philanthropic commu-

" nication arose out of suggestions of our es-
 " teemed fellow-citizen Albert Gallatin, his
 " letter to the Governor and Mr. Bentham's
 " are herewith submitted, and also a letter from
 " the Governor, and other papers connected
 " with this highly interesting subject. The
 " Legislature will determine whether, under
 " the circumstances of our as yet unconsoli-
 " dated system of civil and criminal polity, we
 " can, in the prosecution of this important
 " work, be benefited by the labours of the be-
 " nevolent Mr. Bentham."

Williamstown, Vt. 20th March, 1817.
 Written in a letter dated from thence 18th
 Jan. 1817, and addressed to JEREMY BEN-
 THAM, Esq. Queen's Square Place, West-
 minster, London, by whom it was received

It commences with the words, Fellow
 Citizens, &c.
 In page 4 is a paragraph in the words fol-
 lowing, viz.
 " This occasion is embraced to submit to
 " the Legislature a communication made to
 " the Governor by Jeremy Bentham, of Lon-
 " don, on the subject of public law; which,
 " though dated 14th July, 1814, was not re-
 " ceived until after the adjournment of the last
 " Legislature. As this philanthropic commu-

No. VI.

Queen-Square Place, Westminster,
London, May, 1814.

SIRE,

THE object of this address is to submit to Your Imperial Majesty an offer relative to the department of Legislation.

My years are sixty-six. Without commission from any Government, not much fewer than fifty of them have been occupied in that field. My ambition is to employ the remainder of them, as far as can be done in this Country, in labouring towards the improvement of the state of that branch of Government in Your Majesty's vast Empire.

In the year 1802, a work, extracted, as therein mentioned, from my papers, was by *Mr. Dumont of Geneva*, published at Paris, in three volumes, 8vo. under the title of *Traité de Legislation Civile et Penale, &c.*

In the year 1805, a translation of it into the Russian language was published at St. Petersburg, by order (if I am rightly informed) of Your Majesty's Government.

Since the publication of that work, Europe has seen *two* extensive bodies of law promulgated within its limits: one by the *French Emperor*, the other by *the King of Bavaria*. These two are the only bodies of law of any such considerable extent, that have made their appearance *within the last half century*. Of the one promulgated by the *French Emperor*, a complete *penal* code formed a part. In the preface to that authoritative work, my unauthoritative one is mentioned with honour: among the *dead*, *Montesquieu*, *Beccaria*, and *Blackstone*; among *living* names, (unless it be for some *matter of fact*) none but *mine*. In the Bavarian code drawn up by *Mr. Bexon*, much more *particular as well as copious mention* is made of that work of mine, much more *eulogy* bestowed upon it.

In *France*, under the immediate rod of *Napoleon*—in *Bavaria*, under the influence of *Napoleon*—the generosity displayed by the notice thus taken of the work of a living Englishman, could not but call forth my admiration.

Approbation is one thing; *adoption* is another. With mine before them, both these modern works took for their basis the jurisprudence of *ancient Rome*. Russia at any rate needs not any such incumbrance.

In the texture of the human frame some fibres there are which are the same in all *places*, and at all *times*: others, which vary with the *place*, and with the *time*. For these last it has been among my constant and pointedly manifested cares, to look out and provide. Of the particularities of Russia, I am not altogether without experience. Two of the most observant years of my life were passed within her limits.

Codes upon the *French* pattern are already in full view. Speak the word, Sire, *Russia* shall produce a pattern of her own; and then let Europe judge.

To Russia, it is true, I am a foreigner. Yet to *this* purpose scarcely more so than a *Courlander*, a *Livonian*, or a *Finlander*. In point of local knowledge, to place me on a level with a native of Russia—to *me* as to *them*—information in various shapes could not but be necessary. Any such assistance, no person could ever be more ready to supply, than I should be solicitous to receive and profit by it.

In my above-mentioned work, a sample of a *penal code* is exhibited. In the first place, what I should humbly propose, is—to do what remains to be done for the completion of it. For

this purpose, not many months would I hope be necessary.

Sovereign and Father—in this double character it is on all occasions Your Majesty's wish and delight, to shew yourself to your people. In this same character, even on the rough and thorny ground of penal law—in this same happily compounded character, addressing them through my pen, your Majesty would still shew yourself. The Sovereign by his *commands*, the Father by his *instructions*: the Sovereign not more intent on establishing the necessary obligations, than the Father on rendering the necessity manifest;—manifest to all men; and, at every step he takes, thus justifying himself in their sight.

Reasons—yes, it is by *reasons* alone, that a task at once so salutary and so arduous, can be accomplished:—reasons—connected, and that by an undiscontinued chain of references—on the one hand, with the *general principles* from which they have been deduced; on the other hand, with the several *clauses* and *words* in the text of the law, for the *justification*, and at the same time for the *elucidation* of which, they have respectively been framed. An accompaniment of this kind would form one of the pe-

cularities of my *Code*: a sample is given in my above mentioned *Treatises*.

This sample was a challenge to legislators: the well-intentioned but strictly-shackled Frenchmen shrunk from it. How acutely sensible they were of the usefulness of such an accompaniment—how they wished, and how they feared to expose their works to so searching a *test*—how they tasked themselves to produce a sort of *substitute* to it—(I mean a mass of vague generalities left floating in the air, and destitute of all application to particulars)—how sadly inadequate is that substitute—what excuse is given for the deficiency, and how lame is that excuse—all this may be seen in their respective works.

All comprehensiveness, conciseness, uniformity, simplicity—qualities, the union of which is at once so desirable and so difficult—such, as far as concerns the choice of words, are the qualities for which the nature of the work seems to present a demand. To infuse them into it, each in the highest degree which the necessary regard to the rest admits of, would on this, as on all similar occasions it has been, be to my mind an object of unremitting solicitude. With what promise of success let the above men-

tioned sample speak. Whosoever sees that *one part*, sees, to all such purposes, *the whole*.

In the midst of war, and without interruption to the successes or to the toils of war, a line or two from your Majesty's hand would suffice to give commencement to the work:—to this, the greatest of all the works of peace.

As to *remuneration*, the honour of the proposed employ, joined to such satisfactions as would be inseparable from that honour, compose the only reward which my situation renders necessary, the only one which my way of thinking would allow me to accept.

With all the respect, of which the nature of this address conveys so much fuller an assurance than can be conveyed by any customary form of words, my endeavour would be to approve myself,

Sire,

Your Imperial Majesty's

Ever faithful servant,

JEREMY BENTHAM.

*To the Emperor of all
the Russias.*

No. VII.

ALEXANDER I. *Emperor of all the RUSSIAS to*
JEREMY BENTHAM, *London. Written with*
his Imperial Majesty's own hand, in answer
to the above, No. VI.

FRENCH ORIGINAL.

MONSIEUR, C'est avec un grand intérêt que j'ai lû la lettre que vous m'avez écrite, et les offres qu'elle contient d'aider de vos lumières les travaux législatifs qui auraient pour but de donner un nouveau code de loix à mes sujets. Cet objet me tient trop à cœur, et j'en connais trop la haute importance, pour ne pas désirer, pendant sa confection, de profiter de votre savoir et de votre expérience. Je prescrirai à la commission qui en est chargée, d'avoir recours à vous, et de vous adresser ses questions. Recevez en attendant mes remerciemens sincères, et le souvenir ci-joint comme une marque de l'estime particulière que je vous porte.

ALEXANDRE.

Vienne, le $\frac{10}{22}$ Avril, 1815.

ENGLISH TRANSLATION.

SIR, It is with great interest that I have read the letter which you have written to me,

and the offer it contains to give the aid of your enlightened mind to any such labours in the field of legislation, as may have for their object the giving to my subjects a new body of laws. This object I have too much at heart, and am too well apprised of its high importance, not to be desirous, while that business is in hand, of availing myself of your knowledge and experience. I shall direct the Commission, which stands charged with it, to have recourse to you, and to address to you its questions. Receive in the mean time my sincere thanks, and the annex keep-sake* as a token of the particular esteem in which I hold you.

ALEXANDER.

Vienna, $\frac{10}{22}$ April, 1815.

* This "*souvenir*" was contained in a small packet, closed by the Imperial seal. In an accompanying letter from a Minister in the suite of his Imperial Majesty to a Russian Gentleman of distinction then in London, it was spoken of by the description of "*un bague de prix*," a valuable ring. The packet was returned with the seal unbroken: the reason will be seen presently.

While the Emperor was still in London, Prince Adam Czartoriski, being apprised of the habitual state of seclusion to which my pursuits have condemned me, obtained through the intervention of a common friend, the assurance that the

door of my hermitage should be open to him, for the purpose of a request he wished to make to me for my eventual assistance in relation to a Code of Laws, of the concession of which some expectation was at that time entertained. He came accordingly, and was received with the respect commanded by his well known character, and the cordiality produced by the remembrance of old acquaintance. Being at that time in a state of constant attendance on his Imperial Majesty, this Prince had already for some time been, and for a considerable time continued to be, universally regarded as the destined Vice-Roy of the then future Kingdom. The intentions of his Imperial Majesty with relation to it were at that time either not yet formed, or not yet disclosed: but, if not the hopes, at any rate the wishes, of the Polish nation pointed to the comparatively at least, and in no considerable degree even absolutely, excellent Constitutional Code, which towards the reign of the amiable and unfortunate Stanislaus had been brought forward under his auspices.

The eventual assistance desired was no sooner asked than promised. But, every thing depending upon the perhaps unformed and at any rate unscrutable will of his Imperial Majesty, every thing that was said on that subject was, on the Prince's side naturally, and on my own carefully, confined to generals.

As to the Imperial Letter,—having received it in June, 1815, early in the next month I sent a reply of considerable length, sending at the same time a copy of it addressed to the Prince, whom I understood to be still in attendance on the Emperor.

On the subject of the *ring*,—observing that so distinguished an honour as that of a letter under his Imperial Majesty's own

hand, divested of their value all such ordinary favours as the packet was said to contain, I begged leave to refer his Majesty to the letter thus remunerated, for a proof of my inability to accept any thing to which any pecuniary value could be attached.

In regard to the *Commission* or *Board* in question,—I took the liberty of saying, that I would hazard the prediction, that from that quarter no such, nor any other questions, would ever be addressed to me : that, as to the Minister—in whose hands the management of the business was lodged,—partly from such of his productions as I had seen in print or manuscript, partly from the special and separate reports of divers well-informed persons, I was myself pretty well informed of the state of his qualifications for this most important of all functions : that I was but too fully persuaded of his incompetency for any higher task than that of collecting materials : that he was already much better acquainted with my works than it was agreeable to him to be : that his colour might, if his Majesty pleased to make the experiment, be seen to change at the bare mention of my name : that I was fully and particularly apprized of the money which in the shape of *salaries* had been employed in the *formation* of that department : that the managing head being thus incompetent, the result would be,—that, to any other purpose than that of collecting materials, the whole amount was expended in waste : that not to speak of other instances with which the public was but too well acquainted, the appointment made of such a person was of itself a proof but too conclusive, of the sad dearth there was in that vast Empire, if not of persons actually possessed, of persons as yet known to be possessed, of the qualifications necessary for such a work : that if any such questions, as his Majesty could have had in view, were to be addressed to me, the

only shape, in which I could give an answer capable of being of use, would be that of a complete Outline of a body of law, such as I had already offered to sketch out: that if his Majesty would be pleased to call for such a work at my hands, and at the same time invite all persons in general, and his own subjects of both nations in particular, to exhibit works in competition with mine,—he might thus not only bring under his eye the whole existing stock of appropriate talents, but give birth to an indefinite increase: and thus, at little or no expense, establish a *School of Legislation*,—and thereby make the best provision possible for filling his situations in the department in question, with persons of whose aptitude for the functions of it the most apposite and conclusive proofs had been afforded: that in the first instance the expedient might be tried in Russia, or in Poland, or in both countries at the same time: and that, as to my own part, in Poland in the hands of Prince Czartoriski, I should be sure of the absence of all such opposing tricks, as I should be sure of the presence of, in the other case.

After a letter to any such effect as the above, so far as concerned Russia, my expectations, it may well be imagined, could not be sanguine: but so far as concerned Poland,—on the supposition of Prince Czartoriski's being what he was at that time universally said to be about to be, such was the known benignity and indulgence of his Imperial Majesty's disposition, there might, it seemed to me, be still a chance. From the Prince at any rate, though scarcely from his Majesty, I was still in expectation of an answer,—when, on a sudden,—my situation being at that time at a distance from the center of intelligence,—I learnt from the public prints, that the appointment of Vice-Roy, over the newly organized or rather disorganized remnant of the once Republican Kingdom, had been given to a name that I had never heard of.

After

After this, the treaties that were made public, rendered it but too manifest, that, together with so many other looked for Constitutions, the Constitution of *Poland* had taken its seat on the same cloud with *Utopia* and *Armata*: that what remained of that unhappy country under its own name, had been finally swallowed up in the gulph of Russian despotism: that, in a word, engagements are regarded as binding, by those alone who cannot violate them with impunity; and that of that modern *Holy League*, which in its spirit is so congenial to that of the original one, it is a fundamental principle,—that, in the hands of the *ruling* and *subruling* few, the nearer the condition of the *subject-many* can be brought to the condition of the beasts of the field, the better it will be for the interests, eternal as well as temporal, of all parties.

No. VIII.

(CIRCULAR.)

ON CODIFICATION.

To the Governor of the State of

*Queen's Square Place, Westminster,
London, June, 1817.*

SIR,

ON the subject of Codification, an offer of mine, in the design of which, the State, over the councils of which your Excellency presides, was included, may be seen in a letter which I took the liberty to address to Mr. *Madison*, in his then character of President of your United States:—of this letter a copy, as exhibited in and by No. I. of the accompanying set of printed documents, solicits the honour of your acceptance, in the view of its being submitted to the competent authority in your State. No. II. is a copy of the answer received by me from Mr. *Madison*. No. III. is a copy of a letter, addressed, by Mr. *Gallatin*, at that time Minister Plenipotentiary from your Union to this Court, to Mr. *Snyder*, then Governor of *Pennsylvania*, recommending to his

notice the one which follows. No. IV. is the copy of a letter written by Mr. *Snyder* on the subject of it. In No. V., being an extract of a *Message* delivered by his Excellency to the *Legislative Body* of his State, may be seen the notice which on that occasion he was pleased to take of it.

In the view taken of the subject by Mr. Madison, it happened not to be competent to the high situation at that time filled by him, to give to the offer in question the advantage of his sanction in any of the forms, which, for want of a sufficient acquaintance with the Constitution of the United States, I had taken the liberty of submitting to his choice. Nevertheless, after so substantial an approbation as has been bestowed upon the offer in question, not only by those other distinguished Citizens of your United Commonwealth, but by your late President himself, to wit, in and by the very letter in which he declined making, in a direct way, the proposed communication of it—I hereby take the liberty of submitting to your notice that same offer, as described in the accompanying letter to Mr. Madison, now printed for that purpose: and, forasmuch as of the twenty different States of which your Union is composed, if the offer in question has any claim to regard in any one,

so has it in every other—hence the universality of the currency, which it has been my endeavour to give to it, and hence accordingly the word *circular*, by which an intimation of that endeavour is conveyed.

As to the nature of the communication,—though it is not in the number of those which come every day to be made and received in the ordinary course of public business, yet if in your judgment any prospect of useful service to the State over the councils of which you preside shall appear to be afforded by it, the circumstance of its singularity will not of itself, I am confident, operate as a bar to any such attention as, in consideration of the importance of the subject might otherwise be deemed proper to bestow upon it.

Having of late the good fortune to be not altogether unknown to Mr. Adams, at that time Minister Plenipotentiary from your Union to this Court, and at present your Congressional Secretary of State, who has moreover done me the honour to take charge of all the several papers above-mentioned, for the purpose of facilitating the transmitting of them to their respective destinations,—I take the liberty of mentioning that gentleman as being neither

unable, nor I dare flatter myself unwilling, to afford, in relation to the person thus addressing you, any satisfaction that may happen to be desired.

On the occasion of the offer thus made, of the Outline of a complete body of law for the use of any political State, as a work, which, though the foundations of it have so long ago been laid, remains yet to be completed,—it is matter of no small regret to me, that a correspondent number of copies, of a work containing a very considerable sample of the work now proposed to be executed, cannot accompany this address: I mean the work intituled *Traité de Legislation Civile et Penale, &c.* in three vols. 8vo. Paris, 1802. The case is—that, though got up from some unfinished papers of mine written in this my own language, (the fundamental principles of it, so far as concerns the *penal* branch, having moreover been laid down in my *Introduction to the Principles of Morals and Legislation*, published so long ago as the year 1789, but for this long time out of print) yet no translation of that work into this same language has ever yet been published: and that, of the 3,000 copies which at the time (Anno 1802) were printed at one impression, none (it is believed) are now to be found on sale in this

country, nor by this time probably at Paris, where it was printed: and, by one cause or other, equally out of my reach have been placed two other works published in French, in like manner, from my unfinished papers, by my above-mentioned friend, viz. *Théorie des Peines et des Récompenses, &c.*, and *Essai sur la Tactique des Assemblées Politiques*. Thus it happens, that so far as concerns the penal and civil branches of law, the only documentary evidence herewith transmissible, from which any conception of the work now proffered can be formed, is the testimonial evidence, composed of the letters hereto subjoined, together with the several official testimonies, spoken of or alluded to, in my above-mentioned and hereto also subjoined Letter to President Madison, and a Letter of mine to the Emperor of Russia, which, with his Imperial Majesty's answer and my reply, is also designed to accompany this address. It is my ambition to approve myself,

Sir,

Yours and your Country's

Diligent and faithful servant,

JEREMY BENTHAM.

country nor by this time probably at Paris, where it was printed: and by one cause or other, equally out of my reach have been placed two other works published in French, in like manner, from my unfinished papers, by my above-mentioned friend, viz. *Ylles de la France et des Colonies*, &c. and *Essai sur la Loi*. Thus it happens that so far as concerns the penal and civil branches of law, the only documentary evidence herewith transmissible, from which any conception of the work now proffered can be formed, is the testimonial evidence, composed of the letters hereto subjoined, together with the several official testimonies, spoken of, or alluded to, in my above-mentioned and hereto also subjoined Letter to President Madison, and a Letter of mine to the Emperor of Russia, which, with his Imperial Majesty's answer and my reply, is also designed to accompany this address. It is my ambition to approve myself, as well as my country, to the world.

Yours and your Country's
Diligent and faithful servant

JEREMY BENTHAM

103
101

PART II.

PUBLIC INSTRUCTION.

No. I.

Letter from His Excellency WILSON CARY NICHOLAS, Governor of Virginia, on the subject of Public Instruction. Addressed (the copy of which this is a transcript) to His Excellency JOHN QUINCY ADAMS, Minister Plenipotentiary from the United States, London.— Received by him 17th Sept. 1816.

(CIRCULAR.)

Richmond, May 30th, 1816.

SIR,

By a resolution of the General Assembly of Virginia, the President and Directors of the Literary Fund are requested to digest and report a system of public education, calculated to give effect to the appropriations made to that object, by the Legislature, and to comprehend in such system the establishment of one Uni-

versity, and such additional Colleges, Academies, and Schools, as shall *diffuse the benefits of education throughout the Commonwealth*, and such rules for the government of such University, Colleges, Academies, and Schools, as shall produce economy in the expenditures for the establishment and maintenance of good order and discipline in the management thereof. As President of the Board, *the duty devolves on me, to collect from every source the information necessary for this important object.*

The great cause of Literature and science is not local in its nature, but is an object of interest to the whole human species. The Commonwealth of letters embraces every region, however remote. It cannot fail to excite pleasing emotions in every enlightened American, to perceive that Virginia has taken this subject under its patronage, and devoted a fund to its accomplishment, which is annually increasing.—To you, Sir, I think it proper to address myself, knowing your attachment to Literature, and feeling great confidence, that you will not consider your valuable time mis-spent in communicating any ideas which may promote so useful an object.

I can assure you, they will be received with

that high sense of obligation which their importance must inspire.

I have the honor to be

With great respect, Sir,

Your humble Servant,

WILSON CARY NICHOLAS.*

* Note well, in conjunction with the *end* proposed by this presiding Citizen of this American State, the *means* employed by him for the accomplishment of it: *end in view*, maximizing the subserviency of the proposed Institution, to the public objects to the furtherance of which it is directed: viz. maximization of the *quantity* and *value* of the body of intellectual endowment and active talent in the several shapes in question: in other words, maximization of the *extent*, as *measured* by the *number* of the individuals in question:—of the *extent* to which, as well as of the degree of *promptitude* with which, communication of the several branches of Instruction shall respectively be made: *means*, employed for compassing the end—collecting from *all nations* the appropriate lights.

Compare, with the course taken by Government in this Anglo-American nation, the course taken in relation to the same part of the field of thought and action, by the government of the English nation, from which it sprung. Under the dominion of sinister interest, and interest-begotten prejudice,—by government and by individuals, the benefit of the endowments employed as means of instruction confined—studiously and anxiously confined—to such individuals of the rising generation, whose parents will submit to fetter their minds, by confining them to prescribed forms of religious exercise, to which, on pain of exclusion from the proffered

benefit, their assent is forced : assent, for the procurement of which, if it were not mendacious, the force thus employed would be useless.

On this as on all other occasions, *end in view* of a Representative Democratic Government, maximization of the benefit to the *universal interest* :—*end in view* of Monarchical Government, as determined by the very nature of the Government, maximization of the benefit to the *separate* and *sinister interest* of the *ruling one*, and the *sub-ruling few* :—*means* employed, perpetual addition to the force and efficiency of a selfish tyranny : to the yoke of a self-blinded and abject servitude.

No. II.

(CIRCULAR.)

To the Governor of the State of

Queen-Square Place, Westminster.

London, June, 1817.

SIR,

THIS letter waits upon you, in company with one on the subject of Codification. By that letter the offer is made of a work to be eventually undertaken in future: by the present one, your acceptance is requested for two works, both of them already executed. One of them is comprised in the compass of a single whole sheet Table: it consists of a summary view of the system or mode of instruction, termed sometimes *the new system of instruction*, sometimes, from the inventors, *the Bell and Lancaster system*, the utility of which has already, in so many other countries as well as in that which gave it birth, received such ample testimony from experience. In the sheet in question, there is very little that can be called mine, except the compression and arrangement which I have endeavoured to give to the matter of it. Of the opinion, which, by a judge of

acknowledged and official competence, Comte Delasteyrie, has been formed of the sort and degree of service rendered by the execution of this minor and subordinate task, the expression may be seen in a letter from Paris, with which I was honored by that gentleman, in consequence of a copy of this same Table, which without any accompanying letter had been transmitted to him.

The other is a work altogether my own, intitled *Chrestomathia*, written for the purpose of extending, and applying to the ulterior and higher branches of learning, for the use of the higher and more opulent classes, the mode of instruction, already applied with such undisputed success, to the primordial and elementary branches, for the use of the least opulent, and most populous classes. The proposed institution having already, in a quantum nearly sufficient for its commencement, received the requisite pecuniary support from a number of distinguished characters,—a building, upon a new plan of architectural construction, styled the *Panopticon* plan, the idea of which first originated with my brother, (my only and younger brother, Sir Samuel Bentham,) is on the point of being commenced, within view of St. James's Park, in a quarter of my garden which has

been allotted to the purpose. As to the book intituled *Chrestomathia*, though it has not as yet quite reached the extent originally proposed to be given to it, it may, as to the main purposes of it, be considered as a work already executed. It has not yet been made public in this country in the way of sale, but is expected to be out in a few days. What there is of it at present consists of two Parts. Of Part I., being all of it the printing of which had been completed, a copy, in compliance with the general invitation, given in a printed circular by the then Governor of Virginia, dated Richmond, May 30th, 1816, and received in London on the 17th September of that year, was soon after, by Mr. Adams, to whom, in his quality of Minister Plenipotentiary of the American United States, a copy of that Circular had been addressed, received from me at his desire, and transmitted to the State from whence the invitation came. Of Part II.—consisting of an Essay of the logical kind, on the subject of Nomenclature and Classification, the need of which had been suggested by the General Map of the field of learning, described by Lord Bacon, and executed by D'Alembert for the first French Encyclopedia, the publication had waited for some Tabular Sketches, the printing of which has just now been completed.

A circumstance, by reason of which this work on Nomenclature and Classification in general may, in addition to its more general and principal use, be considered as forming a not altogether unapt accompaniment to the offer made of the draught of an all-comprehensive Code of Law, is this:—viz. that in the aggregate of the logical conceptions to which expression is given in this Part of *Chrestomathia*, a sort of *instrument* is supposed to have been constructed, by the help of which a new sort of security is supposed to be afforded, for the connected qualities of *clearness*, *correctness*, and *compleatness*: qualities, upon the degree of which so essentially depend, whatsoever beneficial effects can be looked for from a discourse of any kind, and in particular from any discourse designed to produce the effect of *law*.

No. III.

Paris, ce 23 Aout, 1815.

MONSIEUR,

J'AI reçu votre 2d Table Chrestomathique sur le système de Lancaster. L'ordre systématique et précis, avec lequel vous tracez les avantages, l'importance, et les applications, que présente ce nouveau moyen d'instruction, apprendra à l'Europe à mieux connoître toute son importance, et vous contribuerez ainsi à lui donner un plus grand développement.

Nous faisons des efforts pour parvenir au grand but que se proposent tous les philanthropes éclairés de l'Angleterre. Nous ne pouvons pas y parvenir avec la même rapidité, vû les circonstances désastreuses qui accablent la France, et le système de destruction et de ravage qui y règne. Mais les mauvaises choses n'ont qu'un temps, et espérons que celui des bonnes arrivera un jour.

Je suis bien flatté que cette circonstance me procure le plaisir de vous témoigner les sentimens d'estime et de vénération que m'ont procuré depuis long-temps vos travaux, si utiles à l'humanité.

C. P. DELASTERYIE.

TRANSLATION.

SIR,

I HAVE received your second Chrestomathic Table, relative to the system of Lancaster. The systematic and precise order, with which you trace the advantages, the importance, and the applications presented by this new instrument of instruction, will render Europe better acquainted with the whole compass of its importance, and you will thus contribute greatly to the developement of it.

Our exertions are directing themselves to the attainment of the great end, which the enlightened philanthropists of England propose to themselves. We cannot make our way towards it with the same rapidity, by reason of the disasters in which France is overwhelmed, and the system of destruction and ravage which has place there. But the bad things of this world have but their time, and one day, let us hope, the good ones will take their place.

It is a circumstance very flattering to me, that the occasion affords me the pleasure of testifying those sentiments of esteem and veneration, which in my mind have for this long time been among the fruits of those labours of yours, which have been so useful to mankind.

C. P. DELASTEYRIE.

No. IV.

*Notice concerning Chrestomathia, by the Paris
Lancasterian Instruction Society.*

*Report of the British and Foreign School
Society to the General Meeting, Dec. 12,
1816. Extract.*

*Appendix, p. 20. A "General Report," made
by the Parisian Society, "on the situation of
" Schools established on the principle of Mu-
" tual Instruction in the Departments, the
" Capital, and its Vicinity, followed by an
" Extract from Foreign Correspondence:—
" read by M. JOMARD, one of the Secretaries of
" the Society, at the General Meeting of the
" 23d of August, 1816."*

*Ibid. p. 28.—England.—We have received
from England interesting accounts on the im-
provement of Schools, particularly on the ap-
plication of the system to the Instruction of
Adults, which will be the object of a separate
Report.*

The account of the establishment, projected
in London by Mr. Bentham, to turn the new

system to the profit of the middling class of society, and apply it to the tuition of Languages, Drawing, and Sciences, is the most important information that the Society have received from England, since the last General Meeting. The method has just been introduced into the English School of Artillery, for the instruction of Mathematics: and new Greek and Latin Grammars have been compiled to serve for the study of those languages on the same principles.

*June, 1817. List (hastily and imperfectly collected) of such of the works of JEREMY BENTHAM as are in print, set down in the order of their dates. Those marked * have been published, but are out of print. Those marked || have never yet been published:*

1. Fragment on Government: being a Critique on some passages in Blackstone's Commentaries. Anonymous. Anno 1776, 8vo. pp. 265.*

2. View of the Hard Labour Bill, with Observations relative to Penal Jurisprudence in general. 1778. 8vo. pp. 114.

3. Defence of Usury, 12mo. First Edition, 1787. Third Edition published in 12mo. with Second Edition of Protest against Law Taxes. 1817.

4. Introduction to the Principles of Morals and Legislation, 1789. 4to.*

5. Panopticon: or the Inspection-House: containing the idea of a new principle of Construction applicable to any sort of Establishment, in which persons of any description are to be kept under Inspection; and in particular to Penitentiary Houses, Prisons, Houses of Industry, Work-Houses, Poor-Houses, Manufactories, Mad-Houses, Lazarettos, Hospitals, and Schools: with a Plan of Management adapted to the principle, 1791, 2 vols. 8vo.||

6. Draught of a Code for the Organization of the Judicial Establishment in France: with Critical Observations on the Draught proposed by the National Assembly Committee, in the form of a perpetual Commentary, 1790 or 1791, 8vo. 242 pages very closely printed.||

7. Essay on Political Tactics: containing six of the principal Rules proper to be observed by a Political Assembly, in the process of forming a Decision: with the Reasons on which they are grounded; and a comparative application of them to British and French practice: being a Fragment of a larger Work; a sketch of which is subjoined, 1791, 4to. pp. 64.||

8. Supply without Burthen; or Escheat *vice* Taxation: published with 1st. Edition of Protest against Law Taxes, 1796, small 8vo. or 12mo.*

9. Emancipate your Colonies: an Address (thus intituled) by Jeremy Bentham to the National Assembly of France, 1793, 8vo. pp. 48. "Your predecessors made me a French Citizen: hear me speak like one," &c.||

10. Pauper Management: a Letter on the Situation and Relief of the Poor: addressed to Mr. Arthur Young, Editor of the Annals of Agriculture, and published in that work, 1797, 8vo. pp. 288, with Tables.

11. Letters to Lord Pelham, &c. &c. &c. "giving a comparative View of the System of Penal Colonization in New South Wales,

List of Mr. Bentham's Works.

" and the Home Penitentiary System prescribed by two Acts of Parliament of the Years 1794 and 1799 ;" viz. in consequence of an acceptance given to a Proposal of the Author's, grounded on the Plan delineated in *Panopticon* as above, 1802. 8vo.||

12. Plea for the Constitution, 1803: written in continuation of the above ||

13. Scotch Reform, compared with English Non-Reform: in a series of Letters to Lord Grenville. 1806. 8vo. pp. closely printed: relative to the Judicial Establishment in Scotland and England.

14. Elements of the Art of Packing, as applied to Special Juries: particularly in cases of Libel-Law. 1810. 8vo. pp. 269, closely printed.||

15. "*Swear not at all*:" containing an Exposure of the Needlessness and Mischievousness, as well as Anti-christianity of the ceremony of an Oath: with proof of the abuses of it, especially in the University of Oxford. Printed 1813: published 1817, pp. 97.

16. Table of Springs of Action: printed anno 1815: published anno 1817.

17. Defence of Economy against Edmund Burke: (written 1810) published in the Pamphleteer, No. XVI. January, 1817. 8vo. pp. 47.

18. Chrestomathia, Part I. explanatory of a proposed School for the extension of the new System of Instruction to the higher branches of learning, for the use of the middling and higher ranks of life, 1816, 8vo. Part II. being an Essay on Nomenclature and Classification: including a critical examination of the Encyclopedical Table of Lord Bacon, as improved by D'Alembert: 1817. With Tables.

19. Plan of Parliamentary Reform, with reasons for each Article: and an Introduction, shewing the necessity of radical, and the inadequacy of moderate Reform: 1817.

20. Papers relative to Codification and Public Instruction: including Correspondence with the Emperor Alexander, and the President and divers other Constituted Authorities of the American United States, 1817, 8vo.||

List of Works published at different times in French by MR. DUMONT of Geneva, from unfinished papers of JEREMY BENTHAM.

" 1. Traité de Législation Civile et Pénale, précédés de Principes Généraux de Législation, et d'une Vue d'un Corps complet de Droits; terminés par un Essai sur l'influence des tems et des lieux relativement aux lois. Paris, 1802. 3 tomes."

" 2. Théorie des Peines et des Récompenses. Londres, 1811. 2 tomes."

" 3. Essai sur la Tactique des Assemblées Politiques. Genève, 1816: ensemble, sur les Sophismes."

SUPPLEMENT
TO
PAPERS RELATIVE TO
CODIFICATION
AND
PUBLIC INSTRUCTION:
INCLUDING
CORRESPONDENCE
WITH
THE RUSSIAN EMPEROR,
AND
DIVERS CONSTITUTED AUTHORITIES
IN
THE AMERICAN UNITED STATES.

PUBLISHED BY
JEREMY BENTHAM.

London:

PRINTED BY J. M'CREERY, BLACK-HORSE-COURT;
AND SOLD BY PAYNE AND FOSS, PALL-MALL;
AND
R. HUNTER, (SUCCESSOR TO MR. JOHNSON) ST. PAUL'S
CHURCH-YARD.

1817.

SUPPLEMENT

RELATIVE TO

COGNITION

AND

PUBLIC INSTITUTION

INCLUDING

CORRESPONDENCE

WITH

THE RUSSIAN EMPEROR

AND

DIVERS CONSTITUTED AUTHORITIES

IN

THE AMERICAN UNITED STATES

PUBLISHED BY

JEREMY BENTHAM

London:

AND SOLD BY TAYNE AND COSS, PAUL MALL

W. MINTON, (SUCCESSOR TO MR. JOHNSON) ST. PAULS

CHURCH-YARD

1817.

CONTENTS.

- No. I. Jeremy Bentham, London, to Simon Snyder, Governor of Pennsylvania.—*London, July, 1814* . . . p. 1
- No. II. Jeremy Bentham, London, to the Emperor of all the Russias. Letter 2.—*London, June, 1815* . . . p. 31
- No. III. Prince Adam Czartoriski of Poland, to Jeremy Bentham, London. *Vienna, 25 April, 1815* . . . p. 82
- No. IV. Jeremy Bentham, London, to Prince Adam Czartoriski, of Poland.—*London, June, 1815* . . . p. 83
- No. V. Jeremy Bentham, London, to the Citizens of the American United States.—*London, August, 1817* . p. 97
- No. VI. Jeremy Bentham, London, to James Madison, late President of the American United States.—*London, September, 1817* * p. 143

* Of the above Papers, Nos. I, II, III, and IV, the brouillons, though they had been all the time within the Author's reach, and the packet, in which they were contained, continually under his eye, had, owing to a weakness in his sight, been overlooked, and were not found till after the preceding papers had been dispatched for America. Thence it is, they remain to form so many numbers in this Supplement.

PAPERS ON CODIFICATION, &c.

CORRIGENDA—

—IN THE BODY OF THE WORK.

- Page 5, line 7, after *mass* insert—of
— 5, — last, after *and* insert *by*
— 6, — 9, after *a test* ; insert *as a test*,
after *either* insert *of*
— 7, — 25, before *the* insert *of*
— 33, — 6, after *power* insert —*acts*,
— 39, — 19, for *you* put *yourselves*.
— 43, — 21, after *advantage*, insert *viz.*
— 63, — 24, for *the greatest part* put *occupying the greater extent*
— 93, — 11, for *his situations* put *the situations belonging to*
— 99, — 15, after *spoken* put *of*
— 106, — 8, for *my* put *any*.

—IN THE SUPPLEMENT.

- Page 42, line 20, after *retribution*, insert *which every one would*
— 42, — 21, for *every* put *any*
— 57, — 19, for *continued* put *contained*
— 59, — 9, after *necessary* for the comma put a full stop.
— 67, — 21, for *one* put *an*

In regard to the punctuation, a number of corrections or alterations, which upon revision presented themselves as more or less conducive to clearness of conception, seemed however to be of too little importance to be here added to the list.

SUPPLEMENT

TO

PAPERS ON CODIFICATION,

&c.

No. I.

JEREMY BENTHAM, *London*, to SIMON SNYDER,
Governor of Pennsylvania.

London, July, 1814.

SIR,

IN transmitting the herewith inclosed Letter addressed to your Excellency by Mr. Gallatin, together with some copies of a now first printed Letter of mine, addressed and sent in October, 1811, to President Madison,—it will be necessary for me to accompany them with some account of the incidents that have led to this my respectful address. From a common friend of Mr. Gallatin's and mine, I understood, not long ago, that for some time past he had been expressing a desire to see me. I accordingly called upon him at his then resi-

dence in Orchard Street. Thinking the opportunity a favourable one, for learning whether my abovementioned letter to the President, a printed copy of which is here inclosed, had come to hand,—I went with the MS. brouillon of it in my pocket. I was received, with the most unequivocal tokens, of that favourable opinion, which is so gratifying to me, and of which that letter of his to you contains the expression. I found him almost at the very moment of his then expected departure from this country. Under these circumstances, in the course of a conversation carried on on both sides with the necessary rapidity, I took out of my pocket the MS. abovementioned, speaking of it as a thing which, had time permitted, it *had* been my wish to have submitted to his perusal. Understanding the drift of it, he insisted upon my leaving it: and a plan of future intercourse on the subject, adapted to the various contingencies to which his own local situation stood for some time exposed, was settled between us. I had the scarce expected pleasure of seeing him two or three times after *that*, though no more than once only for any continuance. He was, I believe already gone, when this of his to you was delivered to me: so that, had it been my wish,—though I know not why it should have been,—to have seen it in any

manner altered, whether by omission, addition, or substitution, it has not been in my power. In this account of it is implied the circumstance of its having been sent to me open. To this circumstance I owe the faculty of submitting to you some of the following explanations.

I found him well acquainted—not only with those two works of mine, which he spoke of as having been edited in French by my friend Mr. Dumont—the first at Paris anno 1802, the other in London anno 1811,—but with a preceding one in English, edited in my own name by the title of *An Introduction to the Principles of Morals and Legislation*, London, 1789; which was the forerunner, and, as far as it extended, formed the basis, of the earliest and most extensive of the two in French. Being in English; I regret that, on the present occasion it is altogether out of my power to find a copy to present to you: it having for many years been out of print. About five and twenty years ago (he said) it was put into his hands by Colonel Burr: and from that time (he was pleased to say) he considered himself as my pupil.

It was in October, 1811, as above, that my letter addressed to the President was dispatched out of my hands. It went, accompa-

nied with two recommendatory letters, from a person of eminence here, to two persons of very high eminence in the United States, with whom he was well and personally acquainted. From that time to this, no tidings of it have ever reached me. At the time of its going out of my hands, being at a distance from London, several circumstances concurred in preventing me from being precisely informed of the details of its transmission. Supposing it received, various circumstances presented themselves as capable of warranting the President in leaving it unnoticed. Mr. Gallatin, however, could not bring himself to believe that, being thus unnoticed, it could have been received.

The President of the Union being the person addressed, an observation of Mr. Gallatin was—that it belonged not to a person in that office to *originate* so much as a single law, relative to the *internal* concerns of any one of the United States. My answer was—that that circumstance was completely in my view: but that, on a subject of that nature and importance, in the character of an instrument of *communication*, to any proper person in any one of those States, the highest of all persons comprised in the Union might serve, at any rate, as well as any other person: and if so it were, that in the

number of those States there were any one or more, to which the proposition were regarded as capable of being of use, no one person could, in respect of situation, be more likely—few equally likely—to be informed who they were: and that what, in my obscurity, it had fallen in my way to hear, of the character of the person by whom that office was at that time filled, could not but plead in favour of that choice.

Had the opportunity, which has produced to your Excellency the trouble of this address, fallen in my way at the time of writing that letter,—it would, of course, have been to *The Governor of Pennsylvania* that it would have been addressed, and not to *The President of the United States*.

In that case, in several points of form, as determined by the difference between the two official situations, it would have, of course, been different: but in substance, the difference, if any, would have been so inconsiderable, that, to save the eventual waste of more labour,—in addition to that which, hitherto with so little fruit, has already been expended—I have, with the concurrence of Mr. Gallatin, taken the liberty to send it to you under its original address.

While thus sitting at the feet of my Gamaliel, in a few minutes I saw before me, a map of the whole Union: of three compartments, one seemed to present rather an inviting prospect; another, but a faint one; a third, none at all. In the foreground stood *Pennsylvania*, placed there for specific reasons: in addition to such as are of a *permanent* nature, I beheld two *temporary* ones: one derived from the character of *the present Governor*, of which, at the same time (if I do not misrecollect,) he stated his conceptions as derived rather from general reputation, than from personal intercourse; the other, from the circumstance of his (Mr. Gallatin's) having, when a member of the legislature of that State, had the satisfaction of seeing an individual, (*Judge Wilson*, by birth and education a Scotchman, in consequence of *his* recommendation, both as to the *measure* and as to the *person*,) appointed, for the very service here in question: to which *satisfaction* was added the *expectation* of finding, that,—although, on *that* occasion, the performance of the service was prevented, by the death of the person, by whom it was to have been performed,—yet the sense of the *utility* of it remains unchanged; and the *hope*, that upon his return (which he spoke of as probably not far distant,) to his residence in

that State, the considerations, which he should have to present on that subject, to the minds of his fellow-citizens, would prove not to have been deprived of any part of their efficiency by any intervening incidents.

Inclosed (No. .) is that letter of Mr. Galatin to myself, by which this of his to you was announced and accompanied. From him I have no authority for making any such communication: since the time of my receiving it, I have neither seen nor heard from him. Yet, in making it, I can not charge myself with any such imputation as that of breach of confidence. Of a transaction, of which the welfare of mankind in general, and of your State, Sir, in particular, is so manifestly the object, and the sole object,—(unless any personal satisfaction, derivable from the contemplation of the eventual success of the proffered labour, be worth considering as a distinct object)—an object, the pursuit of which is so perfectly and manifestly free from all mixture of what is commonly understood by *personal* interest, and at any rate, from every thing included under the denomination of *sinister interest*,—of such a transaction it seems to me, that the circumstances can not be too particularly, distinctly, and extensively open to view: and as to the obscure

individual himself, who thus has the honour of addressing you,—of the favourable opinion thus testified to be entertained of him by such a man, should a proportionable measure of public regard be the eventual, as it can not but be regarded as a natural consequence,—you will judge, Sir, whether, from an advantage of this sort, accruing to an individual, any just reason can be deduced, for depriving the public at large,—and that portion of it in particular, over which you preside,—of any benefit, of which the contemplation of such an end, pursued by such means, may naturally be productive.

In the too short intercourse, which it has been my lot to hold with that illustrious citizen of your State, and servant of your confederacy, there was not a single word, to which on his own account in respect of present honour, as well as on the account of mankind at large, in respect of eventual profit in all imaginable shapes, it would not have been a satisfaction to me to see every degree of publicity given, of which human language is susceptible: there was not a word, the publication of which, could be unto me, on my own particular account, a source of regret. In regard to an event, the importance of which, supposing it to take place, will be of such conspicuous magnitude,

scarcely can even the present, much less can any future generation, be altogether incurious to know the origin: and surely for such a work, a purer origin could not so much as be *wished*.

In relation to my Letter to the President,—after such apologies as his politeness suggested, Mr. Gallatin, (it being agreed between us that it should be printed,) favoured me with two pieces of advice: observing at the same time, that he had read the Letter over but once, and that his wish and intention had been, before he gave, to that or any other effect, any *definitive* advice, to read it over a second time: unfortunately for any joint consideration of the subject between us, no such time could be found. At that same meeting, to express my determination to make my utmost profit, of an advice, of the value of which I was so fully sensible, was all that the time allowed of.

Of these two recommendations, one was of a general cast, embracing all that part, in which, in considering what observations might be likely to present themselves in the character of objections to the whole proposal, I brought to view, in company with my answers, that which regards the circumstance of my being a *foreigner*. What was said in relation to *that* topic, had

presented itself to his view (he said) as superfluous: in *the United States*—in *Pennsylvania*, at least—that circumstance, he thought, would not be likely to present itself *of itself*, in the character of *an objection*: and that it was better not to *raise up* phantoms, which would not have appeared of themselves, and in regard to which, when once raised up, there was more danger of thus raising up, or furnishing arms to those who disapproved of the design, than assurance of their being *laid* by those who approved of it.

In relation to this suggestion,—penetrated with that respect for the authority of my adviser, which every thing that I had ever seen or heard of him contributed so strongly to impress, I set myself to work but now, to expunge all such passages as it should appear to me that he had in view. But, when it came to the point, I found all that related to that circumstance,—considered as likely to be brought forward in the character of an objection,—so intimately, and, as to me it seemed, inextricably, interwoven with other matter, which, consistently with the requisite explanation, could not, without considerable disadvantage, as it appeared to me, be left out,—that I determined to let it stand untouched. How the separation could be made, I saw not,

without taking a considerable part of the whole, and writing it anew. And for this task, destitute of that information, as well as encouragement, which his presence would have afforded me,—loaded too as I found myself with a variety of occupations, and with the additional weight of almost three years, which since the writing of it have elapsed,—my courage failed me.

But, if you, Sir, who on various accounts, can not but be still better qualified for determining what is best to be done—what it would be advisable to expunge, and what to leave—if you, Sir,—on the supposition of the proposal's appearing to be, on public grounds, worth the labour,—would be pleased to take in hand, at this my humble request, and apply, the censorial sponge,—be assured of my grateful sense of the honour done me, as well as of my cheerful acquiescence.

In his letter to yourself, Sir, speaking of my works, “in most of them,” (Mr. Gallatin, I observe, says,) “you will find peculiarities both
“of matter and style, and some suggestions
“which you will condemn as inadmissible or
“inapplicable.”

In the letter that accompanied it to myself,

he moreover says,—“ Permit me to suggest,
 “ with respect to your intended labours for
 “ Pennsylvania, that she stands in much greater
 “ need of a system of civil or non-penal law
 “ than of a penal code, which is already much
 “ improved, and naturally daily improving. In
 “ the other branch, I include procedure, and
 “ even organization of Courts, as well as *sub-*
 “ *stantive* law:” (these terms, *non-penal* and
substantive, the necessity of the case obliged
 him to take from me :) “ and there,” (continues
 he) “ lies the great difficulty, both intrinsic and
 “ artificial.”

Concerning the peculiarities above alluded to,
 at this distance from your State, my position
 has not enabled me to form so much as the
 slightest conjecture: and, most unhappily for
 me, from my Mentor, from whom I could have
 learnt every thing, time admitted not of my
 learning any thing.

On this subject,—on which, had time admitted,
 I might, with the greatest ease, have poured
 out my whole mind to *him*,—I am thus reduced
 to the necessity of addressing myself to *you*,
 Sir, at the risk of being found troublesome.

Notwithstanding what you have seen above,

I can not but flatter myself, Sir, with the hope, that you will agree with me in the opinion, that, for reaping the greatest profit from whatsoever service it may be in my power to render, the most promising course you can take, is to leave me as *free* as possible:—free, and not only in respect of the *manner* of treating each part of the subject, but also in respect of the *priority* as between part and part:—free, not only in respect of *matter*, but in respect of *form*: free, not only in respect of absence of *restraint*, but in respect of absence of *constraint*: “free,” (as the Poet says) “as air,” in every respect. In and by so doing, there would be no precise limits, to what, in respect of the *use* capable of being made of the work, you may gain: and,—should there be any the smallest benefit, which, if left free, it might have been my good fortune to contribute to put you in possession of,—its not being as yet in the contemplation of any of you, will hardly be deemed a sufficient reason for your depriving yourselves of it. On the other hand, by any such freedom on my part, not a particle either of loss or risk will you on your part be exposed to.—Yes: if in the hands of this your proffered servant, there were to exist any the least particle of *power*,—of *power*, or so much as of *influence*,—such influence alone excepted, as by such *reasons* as you will see,

may come to be exercised on your minds.—
 “*Silence,*” fellow Citizens, “*I understand bet-
 ter what is best for the commonwealth than
 you do.*” Such, with all the frankness of un-
 disguised self-sufficiency, is the recorded speech,
 of I forget what *Roman*, in whose instance, the
 consciousness of that intellectual authority,—
 which is the inseparable accompaniment of su-
 perior ability as demonstrated by conspicuous
 service,—might serve as a cloak, and in some
 measure as an excuse—for a degree of arro-
 gance, from which nothing whatsoever could
 have afforded him, or any one, a justification.
 In the present case,—being as far from any pro-
 pensity, as from any title or pretence, to employ
 any such language,—that which the individual
 who is now addressing you, desires at your
 hands, is—not that you *should* condemn *your-
 selves*, but that you should *not* condemn *him*,
 to silence.

If then, on the one hand, my wish is—that,
 for your own sakes, (for no interest can I have
 that is not your’s) my service, as rendered to
 you, should, at this *earliest* stage, be a service
 of perfect freedom,—at a subsequent stage, you
 may depend upon me for a degree of obsequi-
 ousness, such, as will be more likely to exceed
 your expectations, than to fall short of your

wishes. Freedom at the one stage, obsequiousness at the other,—both are the result of one and the same principle, so far as sincerity admits. My intellectual faculties, such as they are, are altogether at your service: but such, to any good purpose, they cannot be, any further than as they are free. *Will*, so far as you are concerned, I have none. To yours, in the execution of this my supposed office, I will accordingly pay the most unreserved—a more than passive—an unreservedly active obedience.

Explanation is here necessary. Most assuredly, to a considerable extent—it is impossible to me to say to how great an extent—what I find to propose to you will appear erroneous.—Again, for the most part, what has thus presented itself to you as erroneous, you will *yourselves* find no difficulty in correcting—in finding for the amendment of it, (whatsoever be the mode of amendment—omission, insertion, or substitution)—such entire provisions of detail, as well as such words as, in your own judgment, will be apt and sufficient for the purpose.—But, —should it be the good fortune of my proposed work, in the general complexion of it, to prove acceptable to you,—a case that may also happen is—that, on the occasion of this or that correction, for this or that reason, it may be

your inclination to *remit* the subject to me; to the end that, in respect of the necessary details, I may propose such particular words, or even such particular expedients, as may seem to me to be best adapted, to the purpose of giving the most thorough effect, say to the *will*, say to the *principle*, be it what it may, which, in general terms has been expressed by you. Should the general method, and mode of expression, for example, as employed in the work, stand approved by you,—such as above, in regard to matters of detail, may, perhaps, be the course approved of by you: viz. under the apprehension, lest, if made by any other hands than those of the original draughtsman, the alteration, made in this or that part, should prove in some way or other repugnant to, inconsistent with, or detrimental to, the provision made and approved of in this or that other part. I say, if made by any *other* hand: for to myself, working according to my own method, I can not bring myself to regard it as in any degree probable, that, in the penning of any one part, the purport of any other that has any bearing upon it, should escape me: a sort and degree of command, which, at least, unless it be after a very long course of practice, it can scarcely be expected that any one man should possess, over a work so voluminous, composed by a different hand.

Well then—on the occasion of such supposed error in such my Code, and thereupon for the correction of it,—or say, in the first instance, and without reference to any such Code,——a certain effect—no matter what, or in which of two characters, viz. that of an *end*, or that of a *means*, presents itself to you as fit to be produced. Referring to me the choice, either of the mode of expression alone, or—matter and expression together, of the expedients—the provisions of detail—by which the effect shall be produced—you require me to perform my part towards the production of it. Of this effect, in whichever of the above two characters considered, the production (suppose) is directly repugnant and irreconcilable to that, which, in my own view of the matter, is *fit* and *right*. Such being the effect, shall I, in my supposed position, refuse or decline to employ my pen towards the production of it? Not I indeed. *On one condition*—a condition which you, Sir, (I speak here in the plural as well as the singular number) will, I am sure, not refuse your subscription to—in my own view of it be the effect ever so unfit to be produced, I will not on that account, so much as decline doing that which belongs to my supposed employment, towards the production of it.

This *condition* is neither more nor less, than the being suffered to possess and use, in this supposed *second* stage, the same liberty, which, without absolutely stipulating for it, I made my humble request for, in the above supposed *first* stage: the liberty of making known my opinion, whatsoever it may be, with the reasons on which it grounds itself. In this liberty will be included—if it be in the character of an *end* that the production of the effect in question appears to me unfit,—the bringing to view the considerations, by which, in the character of *reasons*, that opinion has been produced: if it be in the character of a *means*,—the like liberty, with the addition of that of proposing any *other means*, by which, in my view of the matter, the same end may be produced on more advantageous terms.

In a word—on this condition, by which is saved from violation that *sincerity*,—the violation of which, could not, in this my supposed situation at any rate, on any imaginable occasion, be of any the smallest use,—there is not that imaginable effect, which in that my supposed position, I shall not at all times be ready, in the way in question, to employ my labours towards the production of. Try me—examine me—for the purpose of the experiment, set imagina-

tion to work, to paint the effect in any the most terrific colours—my answer is still the same.*

Taking this course, in this way, (it seems to me) and in no other, can a man, in my supposed

* To avoid starting, at this premature period, any subject, capable of being found pregnant with doubts and differences,—for the experiment, let us take such cases, as being among the strongest that can be imagined, are thereby among those which are surest not to happen. Descending then from these elevations, we shall, by force of the argument *à fortiori*, be able with the greater ease, to clear the ground, of all such difficulties, as might otherwise have presented themselves.

We call upon you (say you) to draw up for us a law, for attaching to this or that species of offence, the punishment of the *wheel*, as employed till t'other day in France—to this or that other, that of *dismemberment* by four horses, as also then and there employed:—is there that imaginable case, in which you would lend your hand to any such atrocity?—Oh yes, (say I) *that* there is, and with gladness: yes, and not only so, but even advocate it, and give my vote for it, if I had one:—if, for example, by so doing, I could prevent the attaching, to those same offences, the punishment of *impalement*, still employed in the Turkish Empire. In the case of the *wheel*, the torment always might be, and commonly was—in the case of the *dismemberment*, it always was—at an end in a very few minutes: in the other, it frequently lasts for days.—Yet, in my own mind, I am against the employing death as a punishment in any case.

position, steer clear of two opposite errors :
—*over-scrupulosity*, and *insincerity*.

Take the case of the over-scrupulous man. In his judgment the measure given to him to shape is, to a certain *degree*, an unfit one.—What follows?—He turns his back upon it, declaring that he will have nothing to do with it. Of ill humour thus expressed, a merit is commonly, at the same time, made. Such is his purity, nothing will he have to do with evil in any shape.—Nothing to do with *evil*?—then nothing will he have to do with *government*. For what is government but *a choice of evils*? Government operates not but by coercion: coercion can not be produced but by punishment. Coercion—punishment—are they not evils? if they are not, then what else is? Employed to produce a more than equivalent good, or to exclude a greater evil, does *an evil* change its nature? No more than a sum of money does, by being carried to the one or to the other side of an account.

Most compleatly incompatible would any such scrupulosity be, with the performance of the sort of service, for which I am thus offering myself. For, if, after having been in the first instance presented by me, my proposed Code

were to be returned to me,—for me, in pursuance of certain instructions, to propose amendments to it,—how could it happen, but that, among the provisions thus required at my hands, there should be a considerable number that would in my sight be unfit ones?—comparatively at least, if not absolutely *evil* ones?

The other error is *that* of *insincerity*. In any other position than my supposed one, this, of the two errors, is *that*, of which it is scarce necessary to say, that it is the one most frequently exemplified, and every where most likely so to be. Not only by their votes, but by their discourses, do men give their support in public to that one of two opposite measures, which in their own eyes,—as privately confessed, or otherwise demonstrated,—is least beneficial, or most pernicious. This is what, in *every* country, the man of *law*, who has a piece of gold for his fee—confessing it, for how can he deny it?—does for the *half* of his public life. This is what, in *this* country, the man of *politics*—more particularly the legislator, who, lest sincerity or probity in any shape should be possible, has an *office* for his fee—does for the *whole* of his public life. Whether in this *our* legislature, such a course is necessary,—consistent with utility—consistent with probity,—

I stay not—I need not stay—to enquire. Sure I am—and to the present purpose this is quite sufficient—sure I am, that,—in a situation such as that here in question, in the situation in which the acceptance of this my offer would place me,—no such vice would either be necessary, or of any use. In this supposed situation—such is the felicity of it—without any the least particle of insincerity, it would, on every occasion, be in a man's power to render every particle of service, which it would be in man's power to render, with the most consummate contempt for the law of sincerity. Whatsoever is required of him, *that* he does: laying before the eyes of his employers for their choice, as well that which in his own eyes is *unfit*, as that which in his own eyes is *fitting*, to be done.—This being the case, in what way would his employers be the better served,—any more than his own mind and conduct be the more pure,—if—to save himself from being seen to be working in contrariety to his own opinion,—he were to misrepresent his own opinion—to give an untrue account of it—stating it as being favourable to that to which it is really adverse,—adverse to that to which it is really favourable. Here would be a *cloak*—a most costly one—and where would be the *use* of it?—Yet, in the ordinary situation of a member having speech

and vote in a legislative assembly,—as often as it happened to him to propose for adoption a measure, or any the least particle of a measure, which at the same time were in his eyes an unfit one, this would be his only alternative; viz. either to put on and wear a cloak of this kind, or take that course, for the liberty of taking which, I am here stipulating:—viz. the preparing for expected adoption a measure, which, by his own confession, is, in his own eyes, an unfit one.

Sir, you now see—and I hope in a pretty strong light, one of the effects—a happy one, I think, you will acknowledge it to be—of the position in which, with reference to you, I should stand. Obsequiousness,—of the sort and in the degree here in question—to carry it to the length above described, would, in this my supposed position, cost a man much less, working for you at your distance, and such as you are, than it would to carry it to any thing like an equal length, working for government here. Working for you, he would be working for a master, who has not so much as a penny—no, not so much as a ribbon to give. Doing any such work here, he could not work but under a master, who has pence to give in abundance:—pence, which men in abundance are at all times

so ready to earn—to earn at any price. At the same time,—even in favour of the particular—the personal interest—of this master,—even an honest man's judgment could not but lead him to do many things; the necessity of such his situation many more. So many of these things as he should thus have been doing, so many are the occasions, on which, lips there would be—lips not a few—to open and cry aloud—*All this is for the pence!*—But between you and me, Sir, not a penny can be so much as supposed to pass. For the like reason, even among yourselves, working under you, one of *yourselves* could not be so free,—so free, I mean from all suspicion, from all danger of disrespect on the score of obsequiousness,—as I should be. Why? Because, for one of yourselves, (not to speak of *power*, still less of *ribbons*) thriftily and wisely as your pence are distributed—you, even you, have always *pence*.

Sir, it is to a feast that I am thus bidding you. Join hands with me, you and I will govern the world. Sir, I will shew you how we will govern it. Independently of the *reasons* on which it is grounded, and by the contemplation of which it has been produced,—my own opinion not being, even in its own estimation, worth any thing, never do I declare it, (you understand the

sort of occasion, of which I am speaking) without declaring at the same time these *reasons*. If then you have a Code from me, the Code you thus have, will be one that is a Code accompanied with *reasons*. Of this Code, some part, I may hope—hope without much overweeningness—some part, however small—will be sanctioned by your concurrence. Here then will be, in authority as well as in existence, a Code supported throughout by *reasons*. Hereupon, seeing that neither to establish, any more than to pen, a Code, supported throughout by reason, is a thing impossible, government will, in this or that other state, become ashamed of giving out codes, altogether destitute of this support. But it is by the nature of things, that *reasons*, in so far as they are good ones, are made: made *they* can not be, as laws may be and are, by any man that has *power*—by any such man at pleasure. Giving *reasons* every where, rulers will not, every where, without giving such as they would be ashamed to give, be able to give *reasons*, nor therefore to give *laws*, altogether different from *ours*: and thus, you see, our empire spreads itself. To be sure, even for the earliest of these conquests, there is one of us that must wait till he is dead. But this is no more than what he has always been prepared for: this is that, of which no man could

ever be more fully aware than he is. As for you, Sir, over some of *your neighbours*, at least, *your* reign—I see not what should hinder it—may commence in your life-time. Over Morocco, or China, or even over Russia (not to speak of the empire, with the long-winded and round-about name, called by the Greeks in one word *Holophthoria*) I dare not promise you, that you will thus speedily cast forth your shoe: but, for any delay, which human perversity may oppose to you in these distant regions, I flatter myself you will have made up your mind. In the mean time, the men of superior wit and wisdom all over the world,—in whose nomenclature *utility* and *mischievousness* are synonymous terms, and to whom the idea of any increase to human comfort, would, but for the matter it affords for derision, be an afflicting one,—will make their sport of us: and even this effect so far as it goes, even this effect, taken by itself, will, in my estimation at least, be a good one.

As on the one hand, if the observations above submitted be just, in instructions of the *obligatory* kind you can not, in the first instance, be too sparing,—so, on the other hand, in instructions of the *informative* kind, you can not be too liberal. For keeping my *will* in the right path,

nothing can be wanting to me: for to *you*, Sir, (I speak in the plural number) a *will* such as mine is nothing. For proving and keeping my *understanding* in the right path, I have no less *wish* than *need* for every thing that you can give me. Information I mean, as correct and compleat as can be given, on the subject of all those circumstances, by which your country is distinguished from that in which I write, and thence the mind of the people of your country stands distinguished from that which is the most familiar to me: and, as to documents, besides those, if any, which, though in existence, never having been as yet made public, are consequently not only out of my power, but even out of my knowledge,—those which, though published in America, not being as yet published in this country, would, all of them, be, for some time, out of my power to obtain, and, with few exceptions, are as yet out of my knowledge.*

On this subject, besides the above *general* requests, I have two or three *particular* ones to

* Forms of conveyance—such as are most in use,—and forms of judicial procedure in every sort of judicatory,—would be particularly useful, not to say necessary, to me; of these, a considerable part at least, must (I should suppose) be in print.

trouble you with. *One* is—that whatsoever parts of the mass of information are purchasable, may be set down to my account, whereupon as soon as received, the whole amount shall be promptly and thankfully repaid; and that, in case of acceptance, the transmission of the letter informing me of it, may not be made to wait a *moment*,—or, to speak more pertinently, a *ship*,—for the collecting of any part of this documentary mass.

The case is—that, at my age, and with my *constitution*, there is no time to lose. Memory, and capacity for *dispatch*, have already, I perceive, undergone considerable enfeeblement: and the state of my *eyes* is already such as forbids the using them for any purpose of entertainment:—for any sort or quantity of *reading*, beyond what is necessary for the purpose of what *I write*. If whatever aptitude for the task in other respects I may be thought to possess, were already, or threatened to be, in any similar degree diminished,—no such offer as the present would have escaped from me. But, by every day, during which, without sickness, life may be continued to me,—as far as I or my friends can judge, that aptitude, instead of being diminished, not only has been, but promises to be increased. Why?—because it depends upon

those logical arrangements, which, being already consigned to paper, enable me, as if by an algebraic process, to discover on each occasion, so far as the *facts*, that bear upon the case, are known, whatsoever requires to be discovered: and, in the application of which, the more frequently and thoroughly the mind is exercised, the more perfect it is made.

For these same reasons, *another* request that I have to make is—that if in your individual judgment, Sir, the offer should seem to possess a chance more or less considerable, of obtaining acceptance at the hands of the legislature, information to that effect may be transmitted to me by the earliest opportunity, no opportunity being suffered to be lost, by waiting for the determination of the legislature.

After a declaration, the frankness of which will, I hope, stand excused by the necessity,—postponement and rejection will be the same thing.—If, after having commenced, I live not to compleat the service, the very last of my thoughts will be at any rate devoted to it.

From the pen of a man already far advanced in his 67th year, marks of eagerness and impatience, such as these,—impatience to be set down to a task of assiduous, and, in the ordi-

nary sense of the word *pay*, *unpaid* labour, to the end of his small remnant of life, may perhaps provoke a smile. But I know not to what worthier object the labour of any Being in human shape could be directed: and,—being, with or without sufficient grounds, impressed with the hope of my having, by the already bestowed labour of near half a century, rendered myself better qualified than a man unexercised, or even a man much less exercised, in the same time, is likely to be, for rendering to a political state, and thence to mankind at large, service, intellectual and moral, in this its most important of all simply human shapes,—it would be but an ill conclusion of such a course of labour, to leave untried or undone any thing that promised to contribute, in any degree, to the accomplishment of the object of it.

Penetrated with that respect, which your eminent situation, and the reports that have reached me of your conduct in that situation, could not fail to inspire, I have the honour to subscribe myself, Sir,

Your faithful,

though as yet unbidden Servant,

JEREMY BENTHAM.

His Excellency, Simon Snyder,

Governor of the State of Pennsylvania.

No. II.

JEREMY BENTHAM, *London, to the* EMPEROR
of all the RUSSIAS.

LETTER II.

London, June, 1815.

SIRE,

I OPEN this moment the letter in your own hand, with which Your Imperial Majesty has been pleased to honour me. Through another channel, I receive, in the words *bague de prix*, the interpretation of the word *souvenir*. My endeavours to make myself understood on that subject, have I fear, not been altogether successful. The same paquet which conveys to Your Majesty this expression of my gratitude, will bear witness for me, that, in my eyes,—after the proof afforded me, as above, of the place which I am fortunate enough to possess in Your Majesty's good opinion,—money's worth as well as money, is in this case, without value. The Imperial seal will be found unbroken.

Your Majesty's *wish* is—to turn my humble services in some way or other to account. In

that view it is, that Your Majesty has been pleased to point out a particular *course*. But, so it happens, that if this and no other were the *course* pursued, it is not in the nature of the case, that that *wish* should in any degree take effect. The impossibility is the result of circumstances, which to Your Majesty are not known, and which it is therefore necessary for me to bring to view: which done, I will take the liberty of submitting *two courses*, in either of which, the opinion Your Imperial Majesty is pleased to entertain of me, might be productive of public benefit.

“Je prescrirai,” (says the Letter) “Je prescrirai à la Commission d’avoir recours à vous, et de vous adresser ses questions.” The course is a perfectly regular one, and nothing is more natural than that it should have been suggested, or even that it should have suggested itself, to Your Majesty. Yet if this were all, Your Majesty’s intentions, it will be seen, would be altogether frustrated.

In my former letter, a proposal I took the liberty of submitting was, that I should receive Your Majesty’s orders for the drawing up, upon a plan of my own, and submitting to Your Majesty, a *Projét de Loi*, on the subject of some

large portion of that *compleat* body of law, which has so long been in contemplation: and in particular, of that which belongs to the *penal* branch: upon the closer view, which the present occasion has obliged me to take of the subject, the course which, as above, had at that time presented itself simply as an eligible one, now presents itself to me as the *only* eligible one.

The *penal*—I understood from good authority a little more than a twelvemonth ago—was the branch, on the subject of which, at that time, or a little before that time, the greatest advances had been made. From the Commission alluded to, questions relative to this branch (suppose) are addressed to me. For giving answers to those questions, with any prospect of being of use, there is but one course which I could take: and this is—to draw up as above, the proposed *Projet de Loi*, and so transmit the *tout ensemble*. Yes, Sire: upon the *tout ensemble*, in a case like this, every thing depends. The points to which the questions would point, would be such and such particular points. What, in such case, I should have to say in answer, I well know.—“ It will not be possible for me (I should say) to determine within myself what is best to be done in relation to those

points in particular, until it is understood by me what is proposed to be done in relation to such and such other points, with which those are necessarily connected."

In an all-comprehensive body of law, such as that in question, each provision requires to be adjusted to, and for that purpose confronted with, every other. In no other way should I ever think, in no other way did I ever think, of drawing up the *Projet* of a *Code*. Thence it is, that if not in the first instance, at the long run, any papers sent by me in the shape of answers, would, if they amounted to any thing, fall into that very shape, in which I ventured to propose they should be presented in the first instance, and in which the course in question would not admit of their being presented, if at all, till at the end of an indefinitely greater length of time.

On a subject such as this, it is only in proportion as a man is himself master of it, that he is qualified for putting questions to others. On a subject such as this, in the situation occupied by the persons alluded to, if men are perfectly qualified for putting questions, they are pretty well qualified for doing the business without putting questions: at any rate, if, in

their own opinion, they are qualified for putting any such questions, in that same opinion they can scarcely fail of being qualified for doing the business without putting any such questions.

But, the better *qualified* they are in their own opinion, for doing the business, and thence for putting questions in relation to it, the less will they feel *disposed*: and assuredly so long as by any means it could be avoided, no such questions would ever be put.

Suppose them however put—put by the persons alluded to—the questions are still *their* questions. In relation to those questions, before they are sent, the determination will have been already taken: taken by the very persons by whom the questions will have been penned.

The transmission of the question will be matter of *form*. Supposing answers sent, the reception given to the answers will be matter of form. If the acknowledgement of their being received can be avoided, avoided it will be.

If it can not be avoided, the matter of the answers divides itself into two parts. In this or that part, does it happen to be *conformable* to the predetermination, taken as above? in

that part it is of course *needless*: useless therefore,—in any other character, than that of a testimony, in favour of the wisdom, by which the predetermination was made:—as to the *unconformable* remainder, coming as it does, from a foreigner, who, if he has some notion of the business taken in general, at any rate does not understand the state of the particular country in question, it is of course *inapplicable*.

Sire, this is not surmise: it is certainty—certainty, derived from reiterated experience.

The business being, under Your Majesty's government, as the like businesses are with us, in *form* put into the hands of a *Commission*, or, as we say here, a *Board*,—Your Majesty's letter to me, could not, with strict propriety, have spoken of it in any other terms. But, so far as concerns original penmanship, this same business (it is no secret) is,—as in the first instance every such business ought to be, or rather can not but be,—in the hands of one and but one person. Now this one person is generally known: the others being *figurantes*, and, except to the readers of Your Majesty's Court Calendar, not known. Of this one person, and no other, I must therefore, speak, on pain of being unintelligible.

Of this person, though near two years in Your Majesty's dominions, (it was in the years 1786 and 1787) not having visited either Capital, I have not any personal knowledge. But of *his* writings *I* know a great deal more, and of *mine* *he* knows a great deal more, than it is agreeable to *him* to think of. Ever since he began his career, he has beheld in my name an object of terror: an emotion, which, at several distinct times, in the view of several different persons, has betrayed itself: betrayed itself by symptoms, such as would figure in a Comedy. Your Majesty has no time for gossiping anecdotes, or I could furnish written proofs.

Sire, I shall as soon have answers to send to the Emperor of Morocco, as to a Commission so *headed*. But if you have a mind for a laugh, tell him you have received papers from me, and that they are satisfactory. But salts and smelling-bottle should be at hand.

Sire, I should ill warrant the good opinion entertained of me, if I hesitated to pronounce him *radically* incapable: for, supposing this to be a truth, I am perhaps the only person, from whom, with any chance of good effect, Your Majesty could receive it. The persons, by whom on such a subject, any judgment at all

could be pronounced, are extremely few: of these few, probably not one, how intimate soever his persuasion were, could dare to avow it to Your Majesty: unless, perhaps, it were some *rival*, whose suggestions would be liable to be referred altogether to the motive indicated by that name.

Meantime, from the person in question, with his colleagues and supporters, Your Imperial Majesty will have received the assurance, that no such assistance, either from myself or from any other foreigner, is necessary: and that not being necessary, it would be but an incumbrance: for that no foreigner has or can have any tolerable acquaintance with the business: while *they* are become compleat masters of it. In relation to this matter, I will venture to submit to Your Imperial Majesty the following observations.

When, from any country, a compleat body of law, such as appears to be proposed,—or any one of its largest divisions, such as a Penal, a Civil, or a Constitutional Code,—is in contemplation,—in respect of publicity, two modes of going about the business—the *close* and the *open* mode—require to be distinguished.

Carried on in the *close* mode, it is carried on as in ordinary cases, by a single person, or some small number of persons, appointed by the sovereign; and not made public at all, till it comes out *armed with the force of law*.

Carried on in the *open* mode, the work, antecedently to its coming out armed with the force of law, is made public, viz. in the way in which literary works in general are made public: and this, for the purpose—if not expressly declared, at least implied and generally understood—of its being taken for the subject of observations, such as any person (keeping his expressions of course within the bounds of respect and decency) may, in a manner alike public, feel disposed to communicate. The mode, which, in the present case, will, in course, be recommended by the Commission, is the close mode. Why?—because in this mode, their inaptitude, be it ever so compleat, will be screened: screened, till exposure comes too late for obviating and preventing mischief, with which it is pregnant: whereas, by the *open* mode, it would be brought to light in time.

In regard to the demand for previous publicity, altogether different is the present case from that of *ordinary* legislation; i.e. legislation

taking for its subject matters of detail, as they happen to present themselves. In *that* case, the business is, of course, and must be carried, and cannot but be, carried on in the *close* mode. This closeness is what follows from the constitution of the Government: as that does from the extensiveness of the territory, and the state of society among the great bulk of its inhabitants. By want of time, if by nothing else, previous publicity is in that case rendered generally impracticable. The demand for legislation being, in this case, the result of sudden exigency,—such exigency requires to be provided for as it occurs, and without loss of time.

Quite *different* in this respect—not to say opposite—is the present case:—the case (it may be called) of *Codification*: where, of the entire field of *law*—a field little less extensive than the whole field of human action—some very large portion—(a third, a fourth, a fifth, or some such matter)—and which, in some way or other, is—and for ages has—in some shape or other, at successive times, though, hitherto, as to a large proportion of it, in a bad enough shape—lain covered with law,—is to receive an entire new covering all at once. The field having already its old covering, hence comes the *facility* of waiting, and that without any more than the

accustomed inconvenience, for whatsoever lights may be capable of being collected, for the elucidation of the ground: and thence, during whatsoever length of time may, for so important a purpose, be found necessary: *waiting*, viz. before final enactment; the formation of the new one, if as yet unformed, or the examination of it, if formed, being all the while going on. But, of this same new covering, whatsoever may be the sort of matter which it substitutes to the old, one sure effect will be, (unless in so far as this or that particular exception comes to have been made and declared) to reduce the old matter, in its whole extent, to a non-entity. And, along with the *facility*, hence comes the *demand* for a delay—a precaution at once so necessary and so safe.

In a case like this, answers from me received or not received, when, by Your Majesty's authority, the Code as penned by the Commission first comes out, will it come out already armed with the force of law? or only in the shape of a *Projet de Loi*, continued thereupon in that state, for a length of time more or less considerable,—to the intent that, by that means, the sense of the public at large, or of a determinate portion of the public, may, in the mean time be, in some shape or other, taken upon it?

On the first of these plans, in case of an ill-penned Code, the mischief would commence immediately, and without so much as the appearance of a chance of its being prevented.

In the other case, an appearance there will be, of a chance of prevention: but very little more than an appearance will there be.—From the calling into question, in any one particular, the more or less explicitly declared excellence of it, what inducement in any shape can any other person find? what prospect of advantage, either to himself, or to Your Majesty's service? At Your Majesty's ear, stands the official adviser,—seen to have been in possession of it for these dozen years or some such matter,—by whom you will be assured, that the observations are nothing worth, and the author an impertinent, from whom no good service, in this or any other shape, is ever to be expected.

Such is the sort of retribution, and the only one, which, in this *close* mode, every one could entertain a reasonable *expectation* of receiving,—for any labour, which, on so important and vast a field, he might otherwise feel disposed to bestow.

Sire, the mischiefs which,—from so pro-

digiously extensive, and at the same time new, a body of law, drawn up by such hands,—the population of your Majesty's vast Empire will stand exposed to, are such as I tremble but to think of.

In detail, a great deal of bad legislation, the work of a variety of hands, all of them very indifferently qualified, may be endured, and the mischief flowing from it may continue to flow without much notice. Why?—because, being composed of additions gradually made to an original stock, under the influence of which every body was born,—while, of the mischief which is the result of it, a part more or less considerable, in consequence of the observation taken of it, comes sooner or later to be put a stop to,—the rest is imputed to the imperfections inseparable from human nature.

But, of a body of new law, such as that proposed, the effect is, in some very large proportion, as above, to annihilate the whole body of that fabrick upon which every thing which is valuable or dear to man depends: and, when the gap thus made in the old matter comes to be filled up with the new,—then it is, that, of any one of the inadvertences, or ignorances, or wrong judgments, which in this *close* mode, may with

so full an assurance be expected,—ruin, to thousands and tens of thousands, will be but the too probable consequence.

At the same time it will be known—for it is known already—that the labours of an Englishman—of an Englishman, whose labours in this line stand approved, not only by other governments,—by the Bavarian—by the French, at several different periods—but by your Majesty's,—and even by your Majesty in person—that these labours have, to this very purpose, been for these dozen years at your Majesty's command: and, all that while, those who, on this part of the field, have been in possession of your Majesty's ear, have been successful in their endeavours to keep the fruit of those labours from making its appearance.

In the hands of several different persons,—all unconnected with each other—all occupying, at different times, in their respective departments, the highest posts in your Majesty's service,—I could give your Majesty reason to be assured that my being occupied in a task of this nature, would be a result in no small degree advantageous to your Majesty's Empire: in this or that instance, matter to this effect, addressed to myself: in other instances, to

other people. If such had not been their real persuasion, what could have been their inducement for declaring as much, to or concerning an unconnected, and in most instances personally unknown, foreigner?—Then why not say as much to your Majesty?—Sire, they were no longer in office: or, if they were, it had not been, or was not at that time exactly within their province; or if it was, confidence was, as the event proved, on the decline.

The disappointments which, in this same ground, your Majesty has already experienced, are no secret. Now by what cause is it that these disappointments have been produced?—By this one circumstance;—by the adoption of the *close*, to the exclusion of the *open* mode: by the omitting to take the benefit of such lights, as the world at large might be capable of affording: by exclusive confidence, placed in a small number of persons, or rather in a single person, of whose aptitude for the task no proof has ever seen the face of day: a task in which the whole field of government is included, and for which the whole stock of genius, knowledge, and talent, which the civilized world affords, would not be too great.

Sir, there exists not, even in this country,

that man, or that limited number of men, who in the eyes of the public, or even in their own, would be competent to such a task, without receiving all such lights, as, after publication made for that declared purpose, the public in its utmost amplitude should be disposed to furnish. In the Commission in question, is it possible your Majesty should continue to see any such matchless combination of genius, intelligence, and wisdom—to say nothing of probity—as should render superfluous in Russia, those precautions, which in England are so indispensable?

As to *competition*,—in the close mode, of course there could not be any such thing:—competition I mean as between two or more entire *draughts*, i. e. *proposed Codes*—drawn by different hands: unless it were between member and member of that same *Commission* or *Board*; which, in the present instance, I take for granted, is not to be expected. By possibility, the *open* mode might be preserved, *without* admitting competition. In the state of a *Projet*, antecedently to its being armed with the force of law, one work, and no more, being admitted, such one work might be made public, with liberty to persons at large, or to particular descriptions of persons, to make observations

on it:—to point out any such imperfections of detail that might seem imputable to it, but not to propose another *Projet*, in the whole or in part, in lieu of it: in a word, to point out here and there a symptom of weakness, but not to present any thing like a general and radical remedy.

But, in this case, in so far as the mode of proceeding can with any propriety be said to be *open*, its *openness* will, comparatively speaking, be of little use. Let the badness of the only work exhibited be rendered ever so manifest, no better will be produced. Let the disease be shewn to be ever so desperate, no remedy will be at hand to be administered. The utmost good, which, in this way can be done, will be—the putting an end to the design altogether, by shewing the unfitness of the hands, who have been employed in it. But, even out of this good—negative as it is, and no better—a great evil would be but too apt to arise. Instead of the incapacity of the workman, the cause of the bad performance may be looked for—and being willingly looked for, may be found—in the nature of the *sort* of work: in its supposed incapacity of being well performed: and, supposing the unfitness of the *individual* work sufficiently recognized, this of course is

the hypothesis, which by the strongest ties of interest, the unskilful workman will stand engaged to advocate.

So much for the *close* mode. Now as to the *open* mode, competition as above, being supposed admitted. What are its advantages?

In the first place, all that incalculable mass of mischief just alluded to, is avoided.

In the next place, the greatest probability is obtained, of the best possible code: a probability, the greater the number of the competitors on the one hand, and of the critics, in the character of advocates and judges, on the other.

In the third place, the comfort and satisfaction, which so unequivocal a proof of the sincerest regard for their feelings, their wishes, their good opinion, their lasting welfare, could not fail to afford to the thinking part of the people. A more unequivocal one it surely is not in the power of a sovereign to give. *Without* this token,—the best possible code, suppose it even a perfect one, will want much of producing the good effect, which, by means of a work of that sort is capable of being produced: *with* so ex-

pressive a token, any inconvenience, of which the change may, in spite of every care, happen to be productive, will receive no slight compensation, as well as reduction, from the proof afforded of the goodness of the intention that gave birth to it.

In the last place comes, as the effect of all these several causes, the ease to your Imperial Majesty's conscience. Think, Sir, of the responsibility—the tremendous responsibility—which you would incur, by setting the destiny of forty millions of souls, to hang, as it were, by a thread, upon a work of such vast extent, drawn up—I can not but repeat it—by such ill qualified hands. Yes, Sir, this would be responsibility indeed. Pursue the *open* mode—receive—not from mine only, but from every other hand, that can find such an offering to make, whatsoever it shall have to give—plan for the whole, plan for this or that part—miscellaneous observations,—no such burthen will, in that case, press upon your Imperial Majesty's conscience. The consciences, upon which whatever burthen there is will press, will be—in the first place, those of the volunteer workmen themselves: in the next place, those of the *thinking*, though not *working*, part of the public, whose suffrages, by another application of the same

all-preserving principle—the *principle of publicity*, it will have been your Majesty's endeavour to collect. At the door of this many-seated tribunal, should its judgments prove more or less erroneous, will all blame from the error lie. Your Imperial Majesty,—having towards the avoidance of error, done all that it is in the power of man to do,—will stand clear from all self-reproach, as well as from all censure.

Your Imperial Majesty has seen, on the one hand, the *close* mode, with its mischiefs: on the other hand, the *open* mode, with its advantages. Let the course, which, from the first, I ventured to point out, be adopted,—your Imperial Majesty will see all those mischiefs avoided—all these beneficial results secured.

In my proposal, as above,—the *open* mode, with all the advantages naturally attached to it—the open mode, with the benefit of *competition*—was implicitly included.

My *Projet*, I took for granted, would be presented to your Imperial Majesty ready printed. Produced thus to the world before it had ever met your Imperial Majesty's eye,—the work might be ever so inapplicable, or even absurd, your Imperial Majesty would not be subjected

to any imputation on that score. The only source of responsibility would be the choice thus made of the person, to whom the encouragement would thus have been given: but, from all imputation of improvidence on that score, your Imperial Majesty stands, it is hoped, sufficiently exempted, by the testimonies, which in my first letter, were submitted to your Imperial Majesty's notice.

In this state, let me suppose it published (I mean my *Projet*) at St. Petersburg. Over and above any particular degree of aptitude which it may be found to possess,—the advantages which result from the circumstance of its coming from a foreign hand, will presently (I can not but flatter myself) appear manifest.

Of any such publicity given to the work, the object or end in view can be no other, than the receiving from the thinking part of the public, indication of any such imperfections, as it may be in the power of any person to point out in it,—with or without the indication of correspondent remedies, or supposed remedies: unless for a distinct object be to be taken the enabling and encouraging them, to give indications of the like nature, in relation to whatsoever body of law may have been the final result.

In this view, when the publication is announced,—*notice* given in some shape or other to the public at large,—notice, having for its object the obtaining, from all such as in their own conception are qualified to furnish it, communication, of the sort just mentioned,—seems to follow as a matter of course.

Publication, it is true, might have place, without any such *notice*. Moreover, the notice being given, the purport of it might confine itself to simple permission; without any direct and positive invitation. But, without positive invitation,—very limited, and even precarious, would the effect of the notice be in the way of *encouragement*. So, on the other hand, the warmer the invitation, the stronger the encouragement: the stronger the encouragement, and therefore the greater the probability thus afforded, of the accomplishment of the object thus supposed to be in view.

In so far as, in any imperfection or supposed imperfection having place any where in the proposed body of law, it happens to any person to see a probable cause of mischief, to himself or any other person or persons, in whose welfare he feels an interest—in so far, to engage him to do what depends on him towards making known such mischief, to those in whose

power it is, or to him seems to be, to afford relief, *motives* can not be wanting: all that can be necessary is the removal of *restraints*. By the invitation above supposed, this necessary removal will, at least, be strongly promoted, if not universally accomplished: I say, *if not universally accomplished*; for, in so far as, in the event of his making any such communication, an individual, by whom it would otherwise have been made, sees reason for apprehending injury at the hands of any subordinates,—in so far the invitation, given by the sovereign, can not but, in the instance of that individual, fail of such its intended purpose.

But *motives*, how adequate so ever, suffice not without adequate *means*: and, for the purpose of giving publicity in this way to all such useful information as, if *means* were not wanting, might be afforded,—the stock of necessary means at the command of individuals, would, I cannot but apprehend, be very far from sufficient, unless *facilities* were for this purpose afforded by the hand of government.

By the following very simple arrangement, if I do not much deceive myself, not only may the facilities necessary to this purpose be afforded,—but, in the only way in which it can be

either necessary or conducive to the service, *encouragement* may be afforded, and *that* without any unproductive or superfluous expense; and moreover—and still without any additional expense—a *School of legislation* formed, out of which, for filling offices belonging to this department, individuals may be chosen, distinguished by the most conclusive proofs of that aptitude, of the deficiency of which the recorded confessions lie before me: proofs, such as the nature of things will not suffer to be afforded by any other means.

In the whole or in part, let the author of every such communication be eased of the expense of *printing*: in the whole or in part, let him moreover be eased of the expense of *printing-paper*: viz. to the extent of a limited number of copies: but with permission to add, at his own expense, paper for as many additional copies as he thinks fit:—and so in regard to *advertisements*: money, received on account of the sale, to be paid, either all of it to the author, or all of it to the Treasury, or in this or that proportion divided between the individual and the Treasury, according to circumstances.

But an essential precaution, without which, mischievous deception instead of useful informa-

tion will be the result, is—that this facility be afforded indiscriminately to every one that offers. If, under the notice of a selection to be made of the most deserving, the choice be left to any one man or body of men,—the consequence will be—that, to such communications alone as suit the personal purposes, of these Judges whoever they are, will the facility be afforded: in every instance, in which, either in the *matter*, or in the *author*, there is any thing that does *not* suit these personal purposes,—suppression, not publication, whatsoever be the merit of the work, will be the almost sure result.

To whom then shall the facility be afforded? To every offerer, without distinction, so long as any press remains unoccupied: he who first offers being all along first served.

But, suppose every press thus occupied, who is it that shall then determine?—I answer, *Fortune*. Fortune has no sinister interest: *men*, will in such a case, be almost sure to have such interest, and to be more or less swayed by it.

Deception—the result of partial information—will not be the only mischief: instead of *reward*, he by whom a communication—useful in

itself, but to the Judge or Judges in question unacceptable—is tendered, will in return for it receive *punishment*. As long as he *can* be kept, he will be kept in a state of expectation and anxiety, dancing attendance, and wasting—perhaps his *money*, and certainly his *time*: when at last his patience is exhausted, then it is that he will discover, or not discover, that from the very first he had no chance.

Another result, altogether natural, is—that, by persons on whom the decision depends,—with or without other persons on whom, though erroneously, it will be supposed to depend,—*bribes* will in some shape or other be received: and the candidates from whom they are extracted will be—as well those, to whom it was predetermined to deny the facility, as those to whom it was predetermined to afford it.

The expense of such a facility—even if granted to the utmost extent of the demand—will it be considerable enough to be felt as a burthen by Your Majesty's Treasury? Glorious indeed will be the burthen—auspicious the sign—in such a case.

Here then, Sir, is your *School of Legislation*: and presently I shall have to shew you,

that,—among the Scholars, thus performing their exercises in this School,—persons will be to be found, better qualified than any others could be for doing that for you, which, in my situation, the most consummate wisdom would not qualify a man for doing for you.

My proposed Code will be but an *Outline*. Why? because in my situation, the most consummate ability could not furnish—moderate wisdom would not suffer a man to profess to furnish—any thing more.

Among the circumstances by which a demand for legislation is produced, some are of *universal* growth, others only of *local* growth: to such only as are of universal growth, could a foreign hand undertake to afford *in terminis* an adequate supply of legislative provision, with any sufficient ground for confidence. In this Outline will accordingly be continued so much of the proposed Code as can be proposed to stand *in terminis*. For the filling up of this Outline, notwithstanding the utmost degree of ability with which it can possibly be penned, whatsoever matter of detail, adapted to circumstances of *local* growth may be necessary, must be prepared by some *native* hand: at any rate

by some person, to whom those circumstances have been made sufficiently known by *residence*.

For this matter of detail, the demand will be produced—in the first place, by the widely different condition of different provinces; in the next place, by the different condition of different classes of persons in the same province.

Meantime, even in regard to these details, what I could do, what I am accustomed to do, and what in my proposed Code I should make a point of doing, is—to furnish suggestions, having for their object the affording *guidance* and *assistance* to the local penman, in the adjustment of the details: in such sort, that the general principles exhibited and pursued in the *Outline*—the principles adapted to such circumstances as are of universal growth, and such circumstances of local growth as are generally notorious—may likewise in the *filling up* be pursued. Accordingly, in this way likewise,—the microscope being, in this field, not less familiar to me than the telescope,—I should hope to be of use.

For shortness, I have said *filling up*; aware at the same time, that, to put the work in a

state fit for use, not only *addition*, but *subtraction* and *substitution* may occasionally be necessary.

Now then, Sir, comes the grand use—the immediate practical use—of Your Majesty's *Legislative School*, formed as above. For the filling up, of the *Outline* thus drawn, whether by my own or any other *foreign hand*,—matter of detail, as above, will be necessary,—I might add perhaps even *native hand*: for, in Your Majesty's vast Empire, such in many instances, are the differences between province and province, that the native of one will be little other than a foreigner to another. By whom then shall this business be performed?—I answer—by some scholar or scholars, by whom proof of qualification for the function has been exhibited,—exhibited by exercises, performed as above, in that School, by him or them, in preference, by whom,—according to the best grounded judgment that can be formed,—the proofs of greatest aptitude have thus been furnished. Among them all has no one been found, by whose works proof sufficient of this species of aptitude, has, in a sufficient degree, been thus furnished?—If so, I am truly sorry for it: for, this being the case, then not in the whole of Your Majesty's vast Empire, does there exist any person sufficiently

qualified for the business. In the scale of aptitude,—that person, by whom proof of any degree of aptitude, how low soever, has been furnished,—stands, at any rate, above all those by whom no such proof has been furnished.

Will it be said, by way of objection, that the same difficulties, as those just represented as attaching upon the choice of works for publication, will attach upon every choice to be made, among the authors for the filling of situations such as those in question, *after* the works are published? Not, surely, on any sufficient ground. For, of a selection made for publication, the consequence is—that, by every work not selected (except in the instances in which the author may have the resolution to publish at his own expense—instances which, under such discouragement, do not promise to be very numerous) the public sustains a loss: and, on that plan, among those who upon the open plan would have produced and given in their works, some there may be who, by despair of acceptance, may be deterred from applying their thoughts to the subject. A work thus stifled or nipt in embryo is dead to every purpose: whereas a work, which, through the medium of the press, has once been brought to light, remains upon the carpet, capable at all

times of being taken for the subject of an *appeal*, by which every injustice, done to it in the first instance, may be repaired.

In this way, how unfortunate soever the choices made should eventually prove, still what will at the same time be seen—seen by all eyes—by Your Majesty—by Your Majesty's subjects,—by foreign sovereigns—by foreign subjects—is—that those choices have not been altogether groundless : on the contrary, that, for the securing the best choices possible, the best adapted and most promising means have been employed.

By every such contributor—the authenticity of the production being supposed to be out of doubt—I mean the fact of its having been composed by him whose name it bears—(for this is a point that must not be overlooked) proofs of *attention*, bestowed upon the subject, will at any rate have been furnished : and this is more than will have been furnished by any one else.

Behold now the advantages, from the circumstance that the hand, by which the Outline has been drawn, is a *foreign* one.

1. No restraint whatsoever on the liberty of

criticism. The hand, by which the work is presented, is one from which no man has any thing to fear, any more than to hope. From such a hand, whatever comes is, as the sportsmen say, *fair game*. Not disfavour, but favour rather, will be looked for from the hunting it. Imperfections, and not merits, will be the objects, looked out for with most alacrity, by every native eye.

2. Suppose it put to use:—in the ultimately sanctioned Code, suppose as considerable a portion of this outline employed, as the nature of the case will suffer to be employed. How pure will in such case be the satisfaction of the people! Here cannot have been any undue partiality:—any thing like *favoritism*. The author all the while at a distance, without connexion, and,—with the exception of that mutually honourable influence, which is exercised by understanding on understanding,—altogether without *influence*: to the Sovereign, not so much as his person known: and all this, matter of universal notoriety. Under such circumstances, by what imaginable cause can any preference that has been given to the work, have been produced, but the *opinion* at least—the unbiassed opinion—of its suitability to the purpose?

3. In this case too,—howsoever it may be in *other* Countries foreign to Russia,—an Englishman being the workman, critics can never be altogether wanting in England. From Your Majesty a simple invitation would, I make little doubt, suffice to produce works undertaken expressly for this purpose. But, at any rate, *Reviews* exist, by none of which, consistently with their interests, could a work, executed under these circumstances, be passed by unexamined. And well may your Majesty be assured, that for discovering in it imperfection in every shape, imagined as well as real, adequate motives can not be wanting here.

Compare, Sir, with the Legislation or Codification School thus sketched out, the unschooled Codification-Establishment, at present or lately in existence.

The Report made to Your Majesty of the 28th February, 1804, lies before me. Whatsoever may be its character in any other point of view,—in an *historical* point of view, it is of no small value. From 1700 to 1804—a space of 104 years,—Commission after Commission—Office upon Office—Salary upon Salary—and still nothing done. Thereupon, in 1804, a Commission in a new form:—eleven years more,

and still nothing done. Why?—because the only sort of means, by which, in the nature of the case, any thing could be done—or at least tolerably well done—(I mean those above submitted) have never yet been taken. *So that money is but spent, no matter how it is applied.* So far as concerns salaries, in Russia (I can not but suspect)—in England (I can not but see)—such has all along been the principle acted upon: the consequences have been—those which by the nature of things are attached to such principles.

According to this Report, in the time of Catherine II., the whole field of legislation was divided amongst 15 *Commissions*, composed all together of no fewer than 128 members. By each of these Commissions, a mass of paper was covered with written characters: masses 15, (p. 12) not one of them found fit to make its appearance. How should it have been? where should any of them have got their skill—these Codificators? What motives, what means had they for the acquiring of it? Seven years of hard labour, real or supposed, on the part of this set of Commissioners (p. 12) and then, if I understand the matter right, seven more years of the like labour on the part of another set—(p. 13) and still nothing done. *Publicity*—the most unlimited publicity

—the only possible means of doing any thing,—and still nothing but the closest secresy put in practice!

Always the same failure—always from the same causes, and to the last the same hopeless course pursued. Ah, Sir, with what regret did I not see (it was in the Report of 28th February, 1804, p. 35) the long list of offices, with pecuniary appointments, all of them to last—(for how in common compassion could it be otherwise?) to last for the lives of the official persons. Official persons, 48: total of annual expense, Roubles 100,000. But in these salaries were not included those of either of two personages,—each of them lending his name, neither of them any thing else,—*High Excellencies*, the amount of whose appointments in that quality, shame, it should seem, kept out of the list.

By what portion of that multitude of salaried workmen has any thing been done? and by such of them by whom any thing has been done, in what quantity, and to what value, has work been done?

Not but that, in the way of collecting *materials*, and putting them in order,—workmen, even in that multitude, may have been, and for aught

I can know to the contrary, have been, usefully employed: materials, consisting of dispositions of existing law, distributed under heads. Few perhaps are the occasions, on which,—to the forming a sufficiently grounded judgment on the question,—what, in relation to this or that head, *ought to be* law,—it is not necessary to know what actually *is* law. Statements, showing what *is* law, are therefore among the *materials*, which he to whom it belongs to say what *ought to be*, and thence what *shall be* law, must have to work with. But, the workman by whom materials of this sort are collected and brought to the spot, is but the *hod-carrier*. And where are the *Architects*, or so much as the *Bricklayers*?

By any one of the *volunteer* workmen whom I have thus been labouring to introduce into Your Majesty's service,—not a penny can be received, but for work, which, well or ill done, will, at any rate, have been done: no, nor in any other *proportion* than that of the quantity actually done: and, among those will be—not only Bricklayers, but under-Architects:—whichever function each man feels or fancies himself most fit for. *After trial*, if this or that man does not prove fit, so much the worse: but it is only *by* trial, that he, or any one, can

have had *much* chance of being *made* fit, or any chance at all of being *proved* to be fit.

Where, work or no work, salary is received, what you are well assured of is—a man's affection for the *salary*. Where, in the way here proposed, without salary, or pecuniary allowance in any other shape, work is done,—what you are pretty well assured of, is—a man's affection for the *work*.

Affection indeed, is not itself *aptitude*: but, in every case it is one cause of aptitude, and, in the present case in particular, there can not be a more efficient, not to say a more indispensable one.

Meantime, if I have not been misinformed, one Code at least—and *that* on the Penal branch—if not already in print, is already in more or less forwardness, from the official hand.—Now for a few suppositions.—1. It is out already: 2. It is not out yet, but comes out, before any *Outline* from me is at St. Petersburg:—3. It comes out, but not till after one *Outline* from me has been for some time out at St. Petersburg:—4. It never comes out at all. In these several cases, what may be the effect expected from my work?—From my work, including *School of Legislation*, built on the *Tribunal of free cri-*

ticism, which, as above, I consider as an *accompaniment* to it, or as one *fruit* of it.

Case 1. *It is out already*. But at any rate not with the force of law already given to it: for, had this been the case, I should have heard of it. I should not expect to find that it is so, even in the *probationary* state. If it is,—then, before it receives the force of law, it will rest with Your Majesty to determine, whether the *Tribunal of free criticism*, above proposed for my own work, shall not take cognisance of it. But, in case of the affirmative, on which I cannot help reckoning—in that case, Your Majesty's declaration on that head had need to be explicit.—“*L'Original est confirmé de la propre main de sa Majesté Impériale dans les termes suivans: ainsi soit fait.*” Thus in French. In English, *Woe to all gainsayers!* Such was the ægis, with which the authors of the Report of 28th February, 1804, thought it adviseable to provide themselves.—*Critics be dumb! Woe be to all gainsayers!*

At any rate, if it be Your Imperial Majesty's pleasure to cause a copy to be transmitted to me,—*observations* on it from me,—or, with Your Imperial Majesty's permission, (that my work may not be stopped,) from some friend of mine,

—shall be submitted to Your Majesty with all possible dispatch. It will then rest with Your Majesty's pleasure,—what delay, if any, to allow for the delivering in of my work, before the sanction of law is given to *that*, or any other.

Case 2. *It is not out yet, but comes out before any Outline from me has reached St. Petersburg.*—In the mean time, shall I have been useless? No, Sir—all this while, though I were all the time asleep, I shall have been rendering to Your Majesty useful service. To the official hand, have been all the while applied the *spur* and the *rein*, formed by the idea of the *Tribunal of free criticism*, which is waiting for that work: and, in conjunction with this idea,—the idea of the rival work, from the hand, by the shadow which, at this distance, the official hand hath, as above, been so often made to tremble.

Case 3. *My Outline has reached St. Petersburg, and from the official hand no Projet hath as yet been delivered in, but comes out afterwards.* The official faculties will now have been put to their utmost stretch. The enemy—the foreign enemy—has been seen already on the field. For this his work, here will be at least one Critic, by whom the virtual challenge can scarcely have been refused. Against the in-

truder's work, whatsoever can be said,—here at least is *one*,—and, at his back, others by dozens and by scores,—who, all of them, have had the strongest interest in saying it.

And now, the fresh subject being come in, the Legislative School finds a fresh recruit of Scholars:—Scholars, as many as can descry for themselves any the least chance of advancement, from their exercises as performed in it.

Let me not here withhold the acknowledgement, which even already seems to be due. What from that hand I should expect to find, is—a work not unsusceptible of criticism,—of examination. In it I foresee a work, in which the forms of method will have been observed: in it will be found distinguishable parts. This I collect from what I see in the above *Rapport*. A point (mathematicians tell us) has no parts: a *Chaos*, how vast soever, has not any more. The fifteen masses of proposed legislative matter, spoken of in the *Rapport*, had not, any one of them, any thing like method:—had not any *distinguishable parts*:—thus much I collect from the *Rapport*. By this methodicalness, the sketch given in that same *Rapport*,—and, I should suppose, whatsoever may have been shewn to

Your Majesty since,—stands distinguished, I take for granted, *from*, or at least *above*, all that had gone before it. Here was one step, towards the one thing needful. This, I suppose, is that which gained for the author,—and as far as it went, on grounds, the justice of which is above dispute,—Your Majesty's favourable opinion and acceptance.

Altogether above dispute, are the importance of good arrangement to legislation, and the importance of a set of *Synoptic Tables*,—(*Système figuré* is the word used by the *French Encyclopedists*) to good arrangement: good arrangement and good tables are at once *effect* and *cause*. A man,—who, feeling the need of it, is able to frame an implement of this sort,—is beyond comparison better qualified for the main work, than one, who is either blind to the use of such a security for good arrangement, or unable to produce it.

This then is one step made towards the one thing needful: but it is not *itself* the one thing needful. Here are so many *drawers* or *boxes*. But the *contents*?—what will *they* be? Every thing depends upon the contents: and, from nothing that I have ever seen or heard, can I entertain any favourable expectation, in regard

to the contents, with which, if with any thing, those same boxes are destined to be filled.

Your Majesty was well advised, in the acceptance given to those services. I see not well, how they could have been refused. But the misfortune was—the yielding to that anxiety, which on the part of a person in that situation was at once so natural, and so pernicious:—the anxiety to preclude the Sovereign, according to custom, from receiving, from any other quarter, services, of which the whole civilized world could not afford a supply too large.

Case 4. Lastly—suppose that *notwithstanding the spur so applied, as above, a reasonable time has elapsed, and still no work has appeared from the official hand.* Inwardly felt conviction, of at least the comparative goodness of the already published work,—self-conscious inability to produce a better, if any at all,—such, it will have become manifest, is the state of mind, which the silence has had for its cause. Meantime, here,—by the supposition—here, at any rate, is a something in hand: I mean my own work whatever it may be found to be:—a something, which, but for this my humble proposal, would never have had existence.

To the number of commentators—under the assurance that, where the author is an unconnected foreigner, they will be critical ones,—and thence of self-appointed Judges, under the assurance that they will not be favourably partial ones,—your Majesty sees plainly enough, that it is not without concern, that I should see any limits.

But,—in regard to the sort of a work itself, which is to be the subject of this criticism,—one *condition*, I must confess I should not be sorry to see required,—whatsoever, in the way of *limitation*, might be the effect of it.

This is—that, to each considerable mass of matter,—nay even to each single word where the importance of it required as much,—considerations, destined to serve in the character of *Reasons*,—stated, in proof of the propriety of whatever were so proposed to be established,—should all along be annexed.

This subject was touched upon in my former letter:—I cannot too earnestly solicit your Majesty's attention to it.

Sir, it is only by the *criterion*—it is only by the *test*—thus formed,—that talent can be distin-

guished from imbecillity, appropriate science from ignorance, probity from improbity, philanthropy from despotism, sound sense from caprice,—aptitude, in a word, in every shape, from inaptitude.

Reasons these alone are addresses from understanding to understanding. *Ordinances* without reasons, are but manifestations of will,—of the will of the mighty, exacting obedience from the helpless. Absolve him from this condition—rid him of this check,—not only the man, who presents a Code to you for signature,—but the man who presents your shirt to you,—is competent to make laws. The man who *presents* the shirt? Yes, Sir, or the woman who *washes* it.

Give up this one condition,—Germany alone, on any one subject that you please, will furnish you with as many hundred Codes as you please:—all of them faithfully copied from the chaos, which for a different part of the world was put together, some twelve or thirteen hundred years ago:—all of them composed upon the most economical principles:—all of them written at the rate of so many pages an hour:—all of them, without any expense of thought.

No reasons! No reasons to your Laws!—cries Frederick the Great of Prussia, in a flimsy Essay of his, written professedly on this very subject. Why no reasons? Because, (says he) if there be any such appendage to your law,—the first puzzle-cause of a lawyer, (le premier brouillon d'Avocat)—that takes it in hand, will overturn it. Yes, sure enough: if so it be, that,—a text of law pointing one way,—a reason that stands next to it points another way,—that is, if either the law or the reason is to a certain degree ill constructed,—a mishap of this sort may have place. But, is this a good reason against *giving reasons*?—no more than it would be against *making laws*. As well might it be said—*No Direction Posts!*—Why?—Because, if, coming to a Direction Post, a *mauvais plaisant* should take it into his head to give a twist to the index, making it point to the wrong road,—the traveller may thus be put out of his way.

Suppose now a Code produced, as usual, without any such perpetual commentary of Reasons: prefaced, for form-sake, and to make a show of wisdom—prefaced, as hath so repeatedly been done, by a parcel of vague and unapplied, because inapplicable, generalities, under the name of *principles*. It may be ap-

proved, and praised, and trumpeted. But on what grounds? If, in regard to this or that particular provision or disposition of law, any distinct and intelligible *grounds* for the approbation are produced,—they will be so many *Reasons*. Why then, (may it be said to the draughtsman)—why, if you yourself know what they are,—why, unless you are ashamed of them—why not come out with them in the first instance?—Why not spread them out, at one view, before the public at large,—instead of whispering them, one at one time, another at another, in the ear of this or that individual, pre-engaged by interest or prepossession, in quality of trumpeter?—But if no *such* grounds—that is if no grounds at all—can be produced, where is the truth or value of any such praise?

On the other hand,—suppose a body of law produced, supported, and elucidated, from beginning to end, by a perpetual Commentary of Reasons: all deduced from the one true and only defensible principle—the *principle of general utility*—under which they will, all of them, be shewn to be included.—Here, Sir, will *indeed* be a *new æra*:—the æra of *rational legislation*: an example set to all nations:—a new institution:—and your Majesty the founder of it.

The *Penal* is the branch of law, with which in contradistinction to the *Civil*, I in a manner took for granted that it would be deemed most proper to commence. Reasons are obvious, and seem conclusive. In the penal branch for instance, circumstance of universal growth have place in a larger proportion than in that other. On that account, it lies, in a more extensive degree, within the competence of a foreign hand. In the penal branch too, changes to any extent may be made,—and, so they be but for the better in other respects,—neither danger nor alarm be produced by the change.

Not so in the case of the *Civil* branch. Of *that* branch, the grand and all-pervading object is—to *keep out change*:—to prevent as much as possible, those *disappointments*, which are the result of *actual* and *unexpected* change, and those *alarms*, which are produced by the tremulous *expectation* of change. In this case, general uncertainty in the state of the law—that perpetual source of unexpected changes, in individual instances, to an unfathomable extent—is the grand source of evil: and uncertainty is the inherent disease of that wretched substitute to law, which is called *unwritten* law, and which, in plain truth, is no law at all. For this disease, *written* law—the only sort of law which has any other than a metaphorical existence,—is

the only remedy.—A remedy of this sort, Napoleon had the merit of giving to France. With what degree of skill it is made up, I have never yet seen any use in the inquiring. But, wretchedly bad indeed must this remedy have been, if it has not been in a signal degree better than none.—Happy had it been for mankind,—if, in this way alone, he had set an example to its rulers.

It remains for me to speak of the way alluded to at the outset, as the *other* way, in which, with Your Imperial Majesty's approbation, such services as it may be in my power to render, may, in some sort, be put to use; and in some degree, though not an equal degree, the objects, above spoken of, attained.

By the same conveyance with the letter from Your Majesty, came one from Prince Adam Czartoriski. It is to remind me of an eventual promise I had made to him, and to call upon me for the eventual performance. *Poland* was of course the subject of this promise. What gave occasion to it, Your Majesty may, perhaps, have heard already from that Prince. All that passed between us on either side was in generals: things were not at that time ripe for entering upon particulars. Your Majesty's intentions were not sufficiently known. But, from

the nature of the case, an inference I was led to draw, was—that in relation to that country, the *Constitutional*,—antecedently at least to every other,—was the branch, with relation to which, my services were in view. But, of all branches of law,—the Constitutional is *that*, in relation to which, so far as concerns the drawing of a general *Outline*, a foreign hand seems less competent than in relation to any other. Why?—Because Constitutional law depends throughout upon *localities*. Here then, the plan of giving answers, as above, to incidental questions, is the only one that seems suited to the nature of the case.

Not that in this case, any more than in the other, there could be any use in sending answers,—any further than as, in the place to which they were sent, they found a disposition to put them to use. But if, in the present instance, there be any deficiency on that head,—the application, so obligingly reiterated to me by that Prince, is an effect without a cause.

Meantime, if it were Your Majesty's pleasure to give me orders for an Outline of Penal and Civil law, commencing with the Penal law, for Poland,—my labour, although the field of it were confined to Poland, would find motives altogether adequate to the production of it.

My purpose would thus be answered, but not that which I can not but hope to find Your Majesty's. For Russia,—no competition, no tribunal of free criticism, no School of Legislation, no nursery for functionaries, employed in the department of legislation. Nothing but a faint telescopic view of those establishments, as existing in Poland: the destiny of Russia delivered over to a single hand,—such as every thing I have either seen or heard, concurs in forcing me to regard as an insufficient one.

Your Majesty sees my importunity?—Why should I be ashamed of it?—It is not for money: it is not for power: it is not for dignity: it is not even for favour:—it is for a chance of being of use:—of use?—and *to whom* of use?

Not inconsiderable, either in extent, or number, or importance,—are the subjects of consideration, which I have thus ventured to submit to Your Majesty's decision. But, so far as regards any thing to be done by me, few points there are of any importance, in which the decision can be—at once so simple, so easy, and so safe.

To set me at work, all that would be necessary would be—an intimation of Your Majesty's pleasure to that effect. English must be the language in which I write. It is accordingly

in that language, that in the first instance, it must be printed. But sheet by sheet, as fast as it comes out in English, Mr. Dumont, serving upon the same terms that I do, would—I am as certain as if he were here, and told me so—be happy to render it into French: in which case, the French translation would be in print nearly as soon as the original. The expense of the work in English would be *my* concern: with regard to the French, it would be as Your Majesty pleased. To Petersburg, as many copies,—in English, in French, or in both,—as Your Majesty pleased to order, should be transmitted. What should be done in relation to them when *there*, would of course depend altogether upon Your Majesty's pleasure. But, I hope Your Majesty will have no objection to the giving me a promise, that when there, *they shall see the light*. The work will not be a libel: and, if disapproved,—and, with or without reason assigned, the disapprobation declared, — any such disapprobation will not, naturally speaking, experience much difficulty in making itself respected. I have the honour to be, Sir,

Your Imperial Majesty's

Ever faithful Servant,

JEREMY BENTHAM,

No III.

*Prince ADAM CZARTORISKI, of Poland, to
JEREMY BENTHAM, London.**

Vienne, le 25 Avril, 1815.

MONSIEUR,

LES courses continuelles que Sa Majesté l'Empereur a faites, après avoir quitté l'Angleterre, et les grands intérêts qui L'ont occupé depuis quelque tems, ne m'ont permis que dans ce moment de remettre à Sa Majesté Impériale la lettre que vous Lui avez adressée, Monsieur. C'est avec un plaisir particulier que je m'empresse de Vous transmettre, ci-joint, la réponse de Sa Majesté Impériale.

Veillez recevoir également de mon côté l'assurance de la haute estime que je ne cesserai de Vous porter, et permettez moi d'avance de me flatter de l'espoir que Vous ne refuserez pas de nous éclairer aussi de vos lumières dans tout ce qui pourrait avoir rapport à la législa-

* Transmitting, in official form, the Emperor Alexander's Letter, No. VII. p. 89, of the "*Papers*," &c. to which this is a Supplement.

tion que Sa Majesté Impériale daignera accorder à la Pologne. Je ne manquerai pas, lorsqu'il en sera tems, de m'adresser à Vous, Monsieur, et de vous rappeler les promesses amicales que Vous avez bien voulu me faire à ce sujet.

Je profite, en attendant, avec un grand empressement de cette occasion pour Vous prier d'agréer l'assurance de mes sentimens, et de la considération la plus distinguée avec laquelle j'ai l'honneur d'être,

Monsieur,

Votre très humble

Et très obéissant Serviteur,

A. CZARTORISKI.

(TRANSLATION.)

Vienna, 25th April, 1815.

SIR,

THE continual excursions, which his Majesty the Emperor has been making, since his departure from England, and the great interests with which he has for some time been occupied, allowed not, until this moment, of my remitting to his Imperial Majesty the letter you addressed to him. It is with particular pleasure, that I hasten to transmit to you herewith his Imperial Majesty's answer.

Be pleased to receive, at the same time, from myself the assurance of the high esteem in which I shall never cease to hold you, and permit me in advance to flatter myself with the hope that neither to us,* will the benefit of your assistance be refused, on the occasion of whatsoever boon, in the way of legislation, his Imperial Majesty may deign to grant to Poland. I shall not fail, when the time comes, to address myself, Sir, to you, and to recall to your re-

* Meaning *as well as Russia*, to which country alone the Letter in question had borne reference.

collection the friendly promises, you had the goodness to make to me, in relation to that subject.

Meantime I embrace with pleasure this occasion of begging your acceptance of this declaration of my sentiments, and of that most distinguished consideration with which I have the honour to be,

Sir,

Your most humble,

And most obedient Servant,

A. CZARTORISKI.

No. IV.

JEREMY BENTHAM, *London, to Prince ADAM
CZARTORISKI, of Poland.*

Queen Square Place, Westminster, June, 1815.

DEAR SIR,

FOR one thing, I must begin with casting myself upon the Emperor's forgiveness as well as yours: *that* is, the enormous length of time, (upwards of a month), that has intervened, between my receiving of the two letters, and the dispatching of these my answers. Another thing, for which likewise I must beg your indulgence, is—the rough state in which I am reduced to send a copy, of mine to the Emperor, for your use.

Both trespasses have their source, in an engagement under which the letters found me: viz. that of drawing up for this country, for the use of a voluntary association, a plan of National Education, in relation to which I may perhaps take the liberty of troubling you with a few words, before the close of the present letter, or at any rate by the next messenger.

As to your copy,—the whole business of the Education scheme was in danger of being put a stop to for an indefinite length of time, had I not devoted myself exclusively to it—as to your copy—I mean your copy of my letter to the Emperor—I hope you will find it legible; and, consistently with my engagements, time could not be found for the copying and revisal of another fair one.

As to the original, you, as well as he, will, I fear, be sadly annoyed by it, were it only for the length of it. It was, however, absolutely necessary I should speak out: and I saw no hope of being able so to do, to any purpose, in any lesser compass. I hear it said everywhere—that he is a *good-natured man*:—by what you will find me saying to him, that quality will be put to the *test*. From me, if he has patience enough, he may thus *read*, what from a man in any *other* situation, it is not in the nature of things that he should either *read* or *hear*.

A bandage on his eyes—leading strings on his shoulders—on *this* part of the field of government, such has hitherto been his *costume*. My aim is to rid him of those appendages;—is it possible he should forgive me?—Forgive me or not, that is not the point: that he should

suffer himself to be rid of them, *that* is the one thing needful.

I hope this will not draw *you* into a scrape: a scrape on your part so perfectly undeserved: for, no such thing as *a tale out of school* have I ever had from *you*.

If, by any thing I have said, an end should be put, not only to *that* correspondence, but to another, which is so truly flattering to me,—I shall be truly sorry. But it was necessary to run the risk: for I think you will agree with me, that, whether *with* it any thing be done or no, *without* it nothing was at any rate to be done.

The letter addressed to his Majesty, I put into a separate packet. I avoid purposely any such attempt as that of making it pass through your hands. In relation to an official person there so frequently alluded to, it was absolutely necessary I should speak without reserve: and there seemed neither necessity nor use for *your* being involved in any such business.

Even if it should be in the *Constitutional* part of the field of law, that my labours, such as they are, should be desired by you,—(though for

reasons already given, *that* is the part, in relation to which my hopes of being of use are least sanguine),—I repeat my promise to put them under your command: 1. Because I do not absolutely despair of being able to do good, here a little and there a little—even in relation to *that* branch: 2. Because, (as I say to the Emperor), *that* is the branch, which, *I imagine, you* had more particularly in view. But, my expectations are much more *extensive*, as well as sanguine, in relation to the *Penal* and the *Civil* branches: including, in both cases, (though, so far as concerns the organization of the *Judicial Establishment* it belongs to the *Constitutional* branch), the *System of Procedure*.—Why? Because, in the *Civil* branch there will be a good deal of matter,—and in the *Penal* a good deal *more*,—applicable alike to the circumstances of *all countries*; and therein applicable, with little or no difference, under *any form of government*. So far, therefore, I could myself *propose* matter, with a tolerable expectation of its being received, and thence with a proportionable degree of facility and alacrity: whereas, in regard to *constitutional* law, in which is included the *form of government*, it would be folly for me to pretend to originate any thing considerable.—What is the monarch willing to *leave*, or to *concede*, to your Nobles, and the great body of the people

taken together?—What are the Monarch and your Nobles, taken together, willing to *leave*, or to *concede*, to the great body of the people?—What are the people at present in a condition to *receive*, if the *powers* on which it depends, were *willing* to *concede* it to them?—What more, within a moderate space of time, may they be expected to come *of themselves* to be *in*, or to be capable of being put *into*, a condition to receive,—and by what means?—All this, if known to any body, is known to you: not a particle of it to me.

When, near the close of the reign of poor King Stanislaus, a Constitutional Code for Poland was drawn up, *Bukati* (he I think it was that was then resident here) sent me a copy of it. What is become of it I do not exactly know. But what I remember, is—that people in general were here much pleased with it: myself among the rest, as far as I had looked at it, which was very slightly: for, being deeply embarked in other pursuits at the time, nothing called upon me to suspend them for any such purpose as the making a study of it.

On the present occasion,—*that* paper, is it intended to form *the basis*? This is, I doubt, too much to hope.—Though why should it be?—

There would be a field for experimenting in : and, to a monarch with the whole Russian empire under such entire command, what possible *danger* can there be from any such experiment? Under the Great Turk, was not *Ragusa* even a *republic*? In such a case, more *real efficiency* than what he would lose in the shape of *coercive power*, the autocrat of Russia would gain in the shape of *gentle influence*: loss, were there any, would be all of it to the successor,—who, not having been the author of the *boon*, would not be a sharer in the *gratitude*. But, even by *him*,—he being used to the comparatively new state of things,—the loss, if there were any, would not be felt.

It is now, I think, about forty years, since I first began to lift up my prayers for Poland. The most intimate friend I had, was *John Lind*,—privy counsellor to the King,—and, under his Majesty, original institutor as well as director of a school for four hundred cadets at Warsaw, (of which I know not the fate),—and governor to Prince Stanislaus, nephew to the poor King,—whose business at our court he did for a number of years, writing a letter from London every other post-day. Bukati being all the while the resident kept for show, because our King would not see in that character one of his own subjects.

Lind's first appearance at Warsaw, was in that of Reader of English,—to your father, or your uncle,—I forget which it was.—Oh, how we used to talk, and talk, of Poland! and how we used to curse the Fredericks, *Great* as they were, not to mention other persons.

Being of all countries and of no party, I have just sent off to Paris a large packet of printed copies, of a part of the Education scheme to leading men there:—Bourbonites, Napoleonites, and Republicans, promiscuously,—some of them old friends of mine.

If you follow the camp, perhaps you may make prize of them:—yet I should be sorry you should: were it only because while you are at *Paris*, you will not be at *Warsaw*: and, whether you are so or no, I am of the number—and that I believe not a small one—of those who are impatient for your being there.

Well — but about this *Education scheme*: were it only to account for the delay, a few words I find I must trouble you with about it: even here, an experiment of it is about to be made, in a part of that garden of mine which you saw. It has for its object—the applying to the higher branches of learning,—and the higher

as well as middling ranks of the community,—that *new* system of instruction, of the success of which you can not but be more or less apprized. *Brougham, Sir James Mackintosh*,—and, if I can persuade him to lend his *name*,—for this is all he can have *time* to lend—*Romilly*, will be at the head of it. For the *details* of the management, there will be some very efficient men, with whose names you can scarcely be acquainted. For reasons not worth troubling you with,—my fixt determination has been, from the very first, not to be of the number. In the *executive* department of it, I accordingly bear no part: but of the *Legislative*, the *initiative* has fallen wholly to my share. My labours in that field had (I believe) already commenced, when I had the honour of receiving you: and, for want of their being compleated, the business was at a stand; and, by a few days more of delay the season might have been lost; (I mean the time when expected *contributors* are in town); and the execution of the plan deferred for a whole twelvemonth: and thereby perhaps finally defeated.

It is now in such advance, that every thing, which it is necessary to publish in the first instance, is either already in print, or in the printer's hands. A copy or two will, I trust,

be brought to you by the next messenger. On this field, at any rate, in doing what I have done, I consider myself as being at work,—not less for *Russia* and *Poland*, than for *London*. For the elementary branches, as taught upon the *Bell and Lancaster* system, *Paris* is already provided with a schoolmaster from hence. The son of a Protestant clergyman—*Martin*, I think, is his name—was, in Louis the Eighteenth's time, sent from the north of France to a *Lancasterian* school, for the express purpose of learning the method,—and is now at *Paris*; and (I understand) much caressed there. His business there, is, to form instructors. The salary offered to him, was 200*l.* :—for such a station, a very considerable salary at *Paris*.—"Sir," (says he) "that will be too much. *Economy*—success or failure depends upon the degree of *economy*. "Such a sum" (naming it) "is perhaps as much as you need give. By this, the price will be set to those who succeed me. If, in my instance, in consideration of my being the first institutor, you see any claim to extraordinary remuneration,—let *that* come by and by, when by experience you see what I have done."

Just the same thing might the Emperor do for *Petersburgh* and for *Warsaw*. The expense

—I mean the necessary expense—would be next to nothing: and if *this* cannot succeed with you, I am at a loss to think what else can.

For this purpose, you will see how necessary it has been for me, to take a fresh peep into every nook and cranny of the whole field of art and science: my business having been, to apply the new method of instruction to every part of that field, that is deemed capable of receiving it. My endeavour has been, to reduce the whole sketch into as narrow a compass as possible: and, the narrower the compass, the greater the quantity of labour which it has cost me. Locke's Essay (so he tells us himself in his preface), is too long—Why? “Because,” says he, “I had not time to make it shorter.”

If, upon the field of Codification it be in my power to throw any *light*, you see the terms upon which it is in the power of your Alexander to have it.—Exactly those upon which God Almighty had *his*: a couple of words, the whole of the expense.

I hope the Emperor will not be angry with me for returning his ring: if it had been a *brass* or a *glass* one, I would have kept it. If he

will send the value of it to my masters and employers, as above, for their *school*, I, as well as they, shall be all gratitude. But of this, in that ensuing letter, with which *this* threatens you.

Believe me ever, with the truest respect,

Dear Sir,

Your most obedient Servant,

JEREMY BENTHAM.

No. V.

**JEREMY BENTHAM, an Englishman, to the Citizens of the
several American United States.**

London, Queen's Square Place, Westminster,
July, 1817.

LETTER I.

*Testimonials as to this Proposal and
its Author.*

FRIENDS AND FELLOW-MEN,

ERE this reaches you, you may have seen, many of you, what, some years since, I wrote to the then *President* of your United States;—if so, you will have seen what in return was written by that chief Functionary of yours to me. You will have seen the sort of service which it was and is my wish to render to you. You will have seen

whether, in the opinion of your late *President Madison*—you will have seen whether, in the opinion of your late Secretary of the Treasury, *Albert Gallatin*—you will have seen whether, in the opinion of the Governor of Pennsylvania, *Simon Snyder*—the service itself promised and promises to be a useful one; and how far he who thus addresses you has been regarded as qualified for the rendering it. The tract, in which *those* Letters are inserted at length, being too bulky to admit of the sort of circulation hoped to be given to *these*,—short extracts from them are here subjoined.* The

* (EXTRACTS.)

I. *President Madison, to Jeremy Bentham, Washington, May 8th, 1816.*

“The very distinguished character you have established with the world, by the inestimable gifts which your pen has made to it.” . . .

“That a digest of our laws on sound principles, with a purgation and reduction to a text of the unwritten part of them, would be an invaluable improvement, cannot be questioned; and I cheerfully accede to the opinion of Mr. Brougham, that the task could be undertaken by no hand in Europe so capable as yours.”

II. *Albert Gallatin, then Minister Plenipotentiary, from the American United States, for the signature of the treaty of Peace between that Commonwealth and the Kingdom of Great Britain and Ireland, to Simon Snyder, Governor of Pennsylvania. London, 16th June, 1814.*

“Mr. Jeremy Bentham intends to address you, for the purpose of making a gratuitous tender of his faculties and services, in preparing a system of civil and penal law for the subsequent inspection and revision of the legislature of Pennsylvania. . . . So far as it is practicable, Mr. Bentham having devoted near forty years to the investigation of the subject, from his rare talent of analysis and classification, appears particularly fitted for the under-

“taking. I have ventured to say so much, because those of his works which have appeared in the most popular dress have been published in the French Language. I allude to his “Treatises on Legislation,” and to his “Theory of Rewards and Punishments,” edited by Mr. Dumont, and respectively published in the years 1802 and 1811. These works are generally considered as the best of the age on the subjects of which they treat. Had not other avocations prevented, I would have translated the shortest.”

III. *Simon Snyder, Governor of Pennsylvania, to David Meade Randolph, Williamsburgh, Virginia, written on the subject of the above Letter, and designed for transmission to Jeremy Bentham.—Harrisburg, 30th May, 1816.*

“If the Letters had arrived previously to the 19th March last, on which day the legislature of this State adjourned, an early exhibition to that body . . . of his proposition, and of which I should promptly have availed myself, I am confident would have resulted in measures more commensurate with the object of furnishing him with information to aid, and better adapted to further his generous intentions towards Pennsylvania than what is in my power to furnish . . . Aided by these muniments and publications, Mr. Bentham will be enabled by his talent and research to mature and shape his system for submission officially to the

title of it is "*Papers relative to Codification and Public Instruction,*" &c. Copies of it, together with copies of a Circular Address from me, are in their way to the respective Governors of your States.

You may, I doubt not, learn at any time, by asking him (though never have I asked him) what your present *Secretary of State*, late Minister Plenipotentiary in this country at this court, *John Quincy Adams*, has seen, and heard, and knows, and thinks of me.

Thus much as to authority—intellectual authority: source of the influence of understanding on understanding: intellectual authority, sole and indispensable foundation for a *derivative* judgment:—the only sort of judgment capable of being pronounced by any man, in so far as the materials necessary for a *self-formed* judgment fail of lying within his reach. In the above-mentioned letters, you will have seen a set of *testimonials*—evidences as pure from all alloy of sinister interest, or even personal and partial favour, as it is possible for testimonials to be:—evidences, the value of which no detraction can diminish, no exaggeration increase.

While these letters to you are pen-

"Legislature." N. B. Unfortunately none of the above papers have come to hand.

IV. "*Governor's Message to the Senate and House of Representatives of the Commonwealth of Pennsylvania. Harrisburg, December 8th, 1816. James Peacock, Printer.*"

Page 4. "This occasion is embraced to submit to the legislature a communication made to the Governor by Mr. Jeremy Bentham of London, on the subject of public law; which though dated 14th July, 1814, was not received until after the adjournment of the last legislature. As this philanthropic communication arose out of suggestions of our esteemed fellow-citizen, Albert Gallatin, his letter to the Governor, and Mr. Bentham's, are herewith submitted, and also a letter from the Governor, and other papers connected with this highly interesting subject. The legislature will determine whether, under the circumstances of our as yet unconsolidated systems of civil and criminal polity, we can in the prosecution of this important work be benefitted by the labours of the benevolent Mr. Bentham."

ning, comes from another quarter a sort of testimonial, capable of being regarded by your Representatives in the character of a *precedent*.

As the quondam metropolis and focus of religious liberty, and the still remaining receptacle of whatsoever comes nearest to pure representative democracy on any other part of the globe besides yours, the State of *Geneva* cannot be unknown to you. The intelligence I have to communicate to you from thence is this.—For the drawing up of a Penal Code, grounded on the principles of a work of mine, as published, in French, in the year 1802, by my friend, *Stephen Dumont*, Citizen of that Commonwealth—a commission has just been given to him: whensoever finished, it is to be printed for the use of the Constituted Authorities, to whom it belongs to deal with it in the character of a body of proposed law, as, under the name of *Bills*, works the same in kind, differing only in *extent*, are dealt with in this country, and I suppose in yours.

Here then is a precedent already set: a precedent which,—if without the praise, at any rate without the reproach, of originality,—it belongs to your Representatives, if it seem good in their eyes—to your Representatives, with or without an impulse from you their Constituents—to take into consideration and put to use.

In a private letter, dated from Geneva, 17th June, 1817, and addressed to the man so well known to you, as the oldest and most efficient friend to mankind among English practising lawyers—I mean *Sir Samuel Romilly*—after speaking of his having received from the Constituted Authorities a commission as above, *Pierre Etienne Louis Dumont*,—more commonly known by the shorter signature, *Etienne* (in English, *Stephen*) *Dumont*,—in words of which the fol-

lowing is a close translation, proceeds thus:—" *Bentham's* Plan is the basis of my work. I pursue his method in respect of the division into *General Titles* and *Particular Titles*. In regard to *offences*, I adopt the whole of his classification: and more especially the great and beautiful idea, of proceeding in a uniform manner by commencing with the *definition* of the offence, and following it by an *exposition* of the leading terms of which the definition is composed; then, by a statement of the grounds or causes of *aggravation*, and those of *extenuation*, applying to each genus or species of offence. This plan, which is altogether new, has a prodigious advantage over every other: viz. that of affording, in a pre-eminent degree, every possible facility to improvement, in every part of the details. In truth, this Code will rather be a set of authentic *instructions* for the judges, than a collection of peremptory ordinances. A greater latitude of discretion will be left to them than was ever left by any Code: yet their path being every where chalked out for them, as it were between two parallel lines, no power that can be called *arbitrary* is left to them in any part of it.

" In the Code itself they will behold all the *considerations*, capable of affording proper *grounds* for their decision: and, on each occasion, it is to the *text of the law* that, in justification of such application as, on that occasion, they think fit to make of those same grounds, they will all along make reference: for example, the several grounds of *aggravation* and *extenuation*, respectively above alluded to, on the occasion of their being brought to view, for the purpose of

" justifying such fixations, as shall come to be made of the quantity of the punishment."—Thus far Dumont.

To the acceptance of an offer such as the present from a foreign hand, various are the objections that will be apt to present themselves: in my first letter to Mr. Madison all those have been met, and will, I flatter myself, be found removed: advantage, and without inconvenience, will be seen to be the ultimate result,—of a circumstance, which, at first sight, may be so apt to appear objectionable.

Of this letter, together with the paper containing those others of which you have just seen extracts, your Secretary of State, *John Quincy Adams*, has done me the honour to take charge, for the purpose of its being transmitted to the Governor of your State.

Such are the testimonies submitted to you for the present, in the character of *grounds*, on which to form a *derivative* judgment. Now then, my friends, such of you as, on this subject,—from such considerations as are capable of being compressed within the compass of a sheet or two of letter-press, regard yourselves as possessing the means of framing a *self-formed* judgment,—hear me. Hear an Englishman, whose mind, by the view and prospect of the state of government, in this seat of ill-disguised despotism and self-acknowledged corruption, would be sunk in despondency,—but for the ray of comfort, which beams upon him from your happier clime:—from your incorruptible—your every day more and more flourishing commonwealth: from your government;—the only one that now exists, or ever did exist, on the surface of the globe, in and by which the advancement of the *universal interest*, in preference to all *particular* and narrower interests, is or ever was

the end pursued: pursued?—yes: or in any distinct and unequivocal terms, so much as professed to be pursued.

LETTER II.

Properties desirable in a Body of Laws, for all Purposes.

HEAR then from me in the first place the *properties* or *qualities* which,—ere it can fulfil the *purposes*, for which in your country laws are, as in every country they ought to be, made,—a body of laws, designed for all purposes without exception, must be possessed of: properties, which accordingly, in a work of this kind, may be stated as being *desirable*. 1. *Notoriety*, or rather aptitude for *notoriety*, in respect of its contents; 2. *Conciseness*; 3. *Clearness* in respect of its language; 4. *Compactness* in respect of its form; 5. *Completeness*, or say *all-comprehensiveness*, in respect of its extent; 6. *Intrinsic usefulness* in respect of its character; 7. *Justifiedness*, i. e. *manifested usefulness*, in respect of the body of *instruction*, by which in the form of *principles* and *reasons*, it ought to be illustrated, justified, recommended, and supported.

In regard to all these several *properties*, as they come to be explained,—you will have to consider—how far, in their present state, the body of the laws, under which you live, is from being possessed of them:—possessed of them respectively, in a degree approaching to that which is indisputably desirable, and affords a promise of being practicable. You will at the same time be able to form some sort of conception—not only of my anxiety to give to it the benefit of them all without exception, but in some general way of the *resources* to which I look for the accomplishment of so desirable

a result: resources, by the contemplation of which has been produced that sort of conjectural confidence, which you have seen reposed in me by so many of the distinguished men, who are at once so happily possessed, and by general acknowledgement so highly deserving, of your more decided and unrestricted confidence.

Of these *seven* properties, *three*, viz. *clearness*, *conciseness*, and *completeness*—all of them qualities intimately connected with one another—will naturally present themselves as being desirable in a literary work of almost any sort: properties, the demand for which is at any rate not peculiar to a body of law: and of which on that account no particular mention need here be made. In regard to *completeness* however, so peculiar will the import as well as importance of this word be seen when applied to a body of the laws—peculiar not only in respect of *utility* but in respect of *difficulty*—nothing less than the conversion of the whole body of Common Law into Statute Law being included in the import of it—that the peculiar point of view, in which, on this occasion it has been necessary to contemplate it, will necessitate a particular mention of it in this address.

In this quality accordingly,—to which, on this particular occasion, for distinction sake it may be not improper to add the appellation of *all-comprehensiveness*,—in this, together with *notoriety* and *justifiedness*—(by *notoriety* understand here as before, *intrinsic aptitude* for *notoriety*) in these will be seen three qualities—and the *only* three qualities—which, on the occasion of the offer here submitted to you respecting a body of laws it will be necessary for me to hold up in any special manner to your view: all three of them as being—*completeness* as there explained not excepted—such, that till

this your proffered servant ventured on the enterprize, no draughtsman in legislation ever professed to give, or for aught appears ever so much as thought of giving, in any tolerable degree, by means of any peculiarity of plan or texture, to the body of his proposed laws. Under the head of *all-comprehensiveness* therefore, as applied to the proposed work in question—under this head no less than under the several heads of *notoriety* and *justifiedness*, explanations of considerable length will be indispensably necessary.

As to *intrinsic usefulness*, obvious as is the title it possesses, to a place not only in most literary works, but more particularly in this, no less obvious will be the non-necessity of making on the present occasion any special or separate mention of it: this being a quality, which, of course, and without his being at the trouble of saying so, no man who ever pens a proposed law, can fail of being understood, as wishing to be thought to be, and with whatever degree of sincerity professing to be, anxious in his endeavour to bestow upon it. “*Whereas it is expedient*”—only upon British legislators could such a phrase pass itself off in the character of a *reason*, or for any thing better than a mark of dotage.

But in the ulterior quality of *justifiedness*, i. e. *manifested usefulness*, the quality of simple *usefulness* is included: *justifiedness*, a quality in which on the present occasion so much attention will be seen to have been bestowed: and in this may be seen a quality, which not only has never yet been endeavoured to be given to any comprehensive body of laws, but, until thus noticed by this your proffered servant, appears not to have ever yet been numbered by any person among the *properties desirable* in, or properly appertaining to, any such work.

LETTER III.

I. On *Notoriety*, as applied to LAW.

As in every other part of the field of human action, so in the field of law, only in so far as it is present to the mind, can any idea be productive of any effect. Ah poor silly man! that of such a truth, at this time of day, thou shouldst need to be reminded!

Yes: only in proportion as the conception a man has of it is clear, correct, and complete, can the ordinances of the law be conformed to, its benefits claimed and enjoyed, its perils avoided:—those perils, with which every path, every step in the field of human action, may be encompassed.

To lodge and fix in *each* man's mind, that portion of the matter of law on which *his* fate is thus dependent—exists there that State, in which this operation is not among the most important duties of the government?

Yet, where is the state by the government of which any attention whatsoever appears to have been paid to it?*

To enable government to fulfil it to the highest degree possible, has ever been amongst the most anxious of my desires.

For this purpose, means *extrinsic* to the law itself present themselves of course to every mind:—publishing them for example in cheap editions; causing them to be publicly read by certain persons in certain places.

Of all such *extrinsic* means of notification, next to nothing however will be the effect, unless the matter of the law be prepared for the operation,

* As if from a rubbish-cart, a continually increasing and ever shapeless mass of law is from time to time shot down upon the heads of the people: and out of this rubbish, and at his peril, is each man left to pick out what belongs to him. Thus, in pouring forth law, does the government, as it is written, “rain down snares.”

by the distribution made of its contents, and the form into which they are cast.

For this purpose four leading principles of division, with as many correspondent divisions, have been contemplated and employed by me.

I. First principle of division.—For the benefit of each individual, separate from those portions of the matter of law on which he *has* a concern all those with which he has *not* any concern. Correspondent division, Laws of *universal concernment*—laws of *special* or *particular concernment*. Code, to which are consigned all laws of universal concernment, *the General Code*. Codes, in each of which that portion of the matter of law in which only one or two* denominations or descriptions of persons are concerned, *Particular Codes*.

That portion of the matter of law, with which each individual is concerned to be acquainted, will therefore consist of two parts: viz. 1. the General Code: 2. the collection of Particular Codes; viz. those which correspond to the several particular situations in society, which it happens to him to occupy.

2. Second principle of division. For the benefit of each individual, in that portion of the matter of law in which he has a concern, separate from those portions which he is concerned to bear constantly in mind, those which he is *not* concerned to bear constantly in mind. Correspondent division, Laws of *constant concernment*—laws of *occasional concernment*.

By a law of *constant concernment*, understand a law which applies itself to this or that incident, which is of such a nature that without a man's

* Two: as in case of correlative situations: such as those of *Husband and Wife*, *Master and Servant*. Add to these occasionally, other situations incidentally connected with the principal ones.

having warning of it, it may take place at any time: without his having warning, and thence without his having sufficient time for considering with himself how to act, or for taking advice of others. Example of laws of *constant concernment*: laws declaring how, in case of an unexpected attack on his person or property, a man may, and how he may *not*, comport himself for the purpose of *self-defence*.

Note, that, though in the instance of such laws as are of *constant concernment*, the chance of their being present to the mind at the time for action is in the highest degree dependent on their brevity and compactness,—yet, in the instance of such as are of *occasional concernment*, in such sort as to admit of time for deliberation and consultation,—though, even in regard to these, intelligibility may be destroyed by want of *compactness*,—brevity is comparatively immaterial. In the case of a *dictionary* for example, the largest is little less easily consulted than the smallest. And thus it is—thus, and no otherwise—that *brevity* and *compactness* may be brought into consistency with *completeness*.

3. Third principle of division and distribution. In the case of laws of *constant concernment*,—from such laws, on the observance of which the greatest quantity of interest is at stake, detach those, on the observance of which not so great a quantity of interest is at stake. Use of this separation, employing the most efficient means in planting in the mind those portions of the matter of law, on the observance of which the greatest quantity of interest is at stake.—Correspondent division—1. Laws of *major concernment*: 2. Laws of *minor concernment*.

4. Fourth principle of division. In regard to laws in general, but more particularly in the instance of such as

are *of constant concernment*, from those *principal* portions of matter, to which the mind is not led by any other, and which accordingly cannot be kept in mind otherwise than by themselves,—separate all such portions of *subsidiary* matter, to which, especially when once presented to it, the mind will naturally be led by those same *principal* ones. In this case for example, are *rules* and *examples*: *rules* on the one hand; examples of those same rules on the other. Correspondent division,—division into *Main-text* and *Expository matter*.—Compared with expository matter, main-text possesses not any thing by which its continuance in, or regress into, the mind is facilitated.* But, suppose the *main-text* once well anchored in the mind, the occasional regress of the *expository matter* will find a constant source of facility in the relation it bears to the *main-text*.

Separated from the expository matter, the main-text would thus constitute a sort of *abridgment of the law*:

* In a body of law, of which, it being in its fabric *reasonable*, the *reasonableness* is manifested by a correspondent and perpetual accompaniment of *reasons*, these reasons being deduced from the universally prevalent and universally recognised principles of human nature, viz. human *feelings*, *interests*, *desires*, and *motives*, will of themselves help to lodge, and serve to keep, in the mind those portions of the matter of law, of which the *Main Text* will require to be composed.—See Letter V. *Of Justifiedness, &c.*

On the ground of Constitutional law,—you who on that ground have so nobly shaken off the yoke of English law—the system you have already is as to all essentials, a model for all nations. Accept these my services, so shall it be on the ground of penal law, so shall it be on the ground of *civil* law: accept my services, at one lift you shall ease your necks of that degrading yoke. Without parliamentary Reform, Britain can not, without revolution or civil war, no other monarchy can, take for a model the essentials of your *Constitutional* law: but on the ground of *penal* law, and to no inconsiderable extent, even on the ground of *civil* law, might it—and without change in any part of the constitutional law-branch, be made use of as a model any where: in Russia, in Spain, in Morocco. Hence it was—and without any thought or need of betraying him, not any act of self-denying beneficence, (for my views of the contagious influence of reason in the character of a precedent, were not at that time so clear as they have become since) hence it was that these my services were offered to the Alexander of these days.

an abridgment of the body at large, as composed of main-text and expository matter taken together. Thus there would be given the first example, that has ever been given, or perhaps imagined, of a Law Abridgment, in which, as far as it went, confidence might be reposed with safety. In this way alone can you be assured, that what is given as and for the expression of the legislator's will, is so.†

† Of the distinction between *Main Text* and *Expository Matter*,—and of the mode in which, by omission of the *Expository Matter*, a sort of *abridgment* might be made,—take, upon a plan as compressed as possible, the following examples.

I. *Main Text*. Definition of a simple personal injury.

A simple personal injury is—where, without LAWFUL CAUSE (1) one individual CAUSES, (2) or CONTRIBUTES (3) to cause, to another, any bodily pain or uneasiness, more or less SEVERE or SLIGHT, (4) without any ulterior MISCHIEF (5).

II. *Expository Matter*.

To each of the *five* leading words distinguished by Capitals, explanations are subjoined: in *three* of the *five* instances, viz. No. 1, 3, and 5, these explanations would serve alike for the definition of other offences; and reference would accordingly be made to so many *General Titles*: in the two other instances, the explanation would perhaps have no ulterior application. In the present instance, the *Explanatory Matter* occupies, in the whole, about *five* or *six* times the space occupied by the *Main Text*. Here then may be seen an example, of the amount of the saving made upon the burthen on the memory. As to the *Expository Matter*, some parts of it apply to cases, which, naturally speaking, will be rarely exemplified; other parts may be expected to be anchored in the mind, by the relation they bear to human feelings, and to the matter of the *Main Text*.

Upon the whole, *three* propositions will serve to close this subject: 1st. On the extent of the *notoriety* given to the laws, depends every good effect it is in their nature to produce: 2. On any such endeavour as that of accomplishing this object, by no legislature has any exertion been ever bestowed: to the accomplishment of this same object, the whole force of this your proffered servant's mind has all along been, and would all along be, applied.

. Note, that with reference to the matter of the *General Penal Code*, a great part of the matter of the *General Civil* or *Non-Penal Code* may be considered as bearing the relation of *Expository Matter*. Thus, under appropriate penalties, the *Penal Code* having forbid the meddling with property without *title*, part of the *Civil Code* will be occupied in the exposition of what belongs to the several *sorts of titles*: and, of these, *title by Contract* being one, hence comes in that part which belongs to *Contracts*. So likewise a great part of the *Constitutional Code*: such and such being the *rights*, and *powers*, and *duties*, that appertain to the several sorts of *offices*. Thus much for a *clue* to the labyrinth: this is no place for the *details*.

In *prose*, or even in *verse*, of that part of the law which is of *universal* and *constant* and *major* concernment, the main-text might be got by heart in *Schools*. And to this might be added the correspondent part of the body of *reasons*.*

That, on every occasion of life, every man should be his own lawyer is plainly impossible. In many instances want of talent, in any instance want of time, may suffice to render it so. But, on this point as well as on others, the further the sense of independence can be carried, the better: the better, if not in all eyes, at any rate in such as yours. By no man who is not a driveller, can it be expected that to every lawyer to whom he addresses himself he should be as dear as he is to himself: no man can have a lawyer at all times at his elbow.

Accept my services,—in the book of the laws, my friends, so long as the United States continue the United States, among you and your posterity, in every such accepting State, shall *every man*, if so it please its appointed legislators, find, for most purposes of consultation, *his own lawyer*: a lawyer, by whom he can neither be plundered nor betrayed.

Accept my services,—no man of tolerably liberal education but shall, if he pleases, know—know, and without effort—much more of law, than, at the end of the longest course of the intensest efforts, it is possible for the ablest lawyer to know at present. No man, be he even without education in other respects—no man but, in his leisure hours,—so he can but read—may, if so it please him, know more of law, than the most knowing among lawyers can possibly know of it at present.

* See Letter V. Of *Justifiedness*, as applied to a *body of Law*.

LETTER IV.

II. Of Completeness, as applied to the *Body of the Laws*:—and herein of *Common Law*.

To be known, an object must have *existence*. But *not* to have existence—to be a mere non-entity—in this case, my friends, is a portion—nay, by far the largest portion—of that which is passed upon you for *law*. I speak of *Common Law*, as the phrase is: of the whole of *Common Law*. When men say to you, the *Common Law does this*—the *Common Law does that*—for whatsoever there is of reality, look not beyond the two *words* that are thus employed. In these words you have a name, pretended to be the name of a really existing object:—look for any such existing object—look for it till doomsday, no such object will you find.

Great is Diana of the Ephesians! cried the priests of the Ephesian Temple, by whom Diana was passed upon the people as the name of a really existing goddess: Diana a goddess: and of that goddess, the statue, if not the very person, at any rate the express image.

Great is Minerva of the Athenians! cried at that same time—you need not doubt of it—the priests of the Temple of Minerva at Athens: that Athens at which St. Paul made known, for the first time, the unknown God. The priests of Athens had their goddess of wisdom: it was this *Minerva*. The lawyers of the English School have her twin-sister, their Goddess of Reason. *The Law* (meaning the *Common Law*) “*The Law*” (says one of her chief priests, Blackstone) “*is the perfection of reason*.” By the author of the book on Ecclesiastical Polity, Hooker,—for between lawyercraft and priestcraft there has always been the closest alliance

—the Law had long before been discovered to be a supernatural person, and that person of the feminine gender. Yes: exactly as much of reality was there, and is there, corresponding to the word *Minerva*,—as there is, or ever has been, corresponding to the compound appellative *Common Law*.

Would you wish to know what a law—a real law—is? Open the statute-book:—in every statute you have a real law: behold in that the really existing object:—the genuine object, of which the counterfeit, and pretended counterpart, is endeavoured to be put off upon you by a lawyer, as often as in any discourse of his the word *Common Law* is to be found.

Common Law the name of an existent object?—Oh mischievous delusion—Oh impudent imposture! Behold, my friends, how, by a single letter of the alphabet, you may detect it. The next time you hear a lawyer trumpeting forth his *Common Law*, call upon him to produce a *Common Law*: defy him to produce so much as any one really existing object, of which he will have the effrontery to say, that that compound word of his is the name. Let him look for it till doomsday, no such object will he find.

Of an individual, no:—but of an aggregate, yes. Will that be his answer? Possibly; for none more plausible will he find any where. Plausible the first moment, what becomes of it the next? An aggregate? Of what can it be but of individuals? An individual Common Law—no such thing, you have acknowledged, is to be found. Then where is the matter, of which your aggregate is composed?—No:—as soon will he find a *body of men* without a *man* in it, or a *wood* without a *tree* in it, as a thing which, without having a *Common Law* in it,

can with truth be styled *the Common Law*.

Unfortunately, my friends,—unfortunately for us and you—in the very language which we all speak, there is a peculiarity, in a peculiar degree favourable to this imposture. Not in any existing European language but ours, is the same word in use to be employed to denote the *real* and the *fictitious entity*: not in the ancient Latin, nor in any of the modern languages derived from it: not in the ancient German, nor in any of the modern languages derived from it.

Behold here the source of the deception. But in the mind of any man, by whom this warning has been received, no deception will it produce, unless in this instance imposture be more acceptable to him than truth. In the article *a*—in the single letter *a*—he has an Ithuriel's spear: by the touch of it he may, as often as he pleases, lay bare the imposture. A *Statute Law*, yes: a *Common Law*, no: no such thing to be found.

Be it a reality—be it a mere fiction—what is but too undeniable, and too severely felt, a something all this while there is, with which you are ever and anon perplexed and plagued, under the name of *Common Law*.

Yes, says our lawyer: and, allowing to you that in Common Law there is no such thing as Law, yet what you will not deny—and what will equally suit my purpose, is—that such things there are—yes, and in no small abundance—such things there are as rules of law. So much for our lawyer.

Rules? yes, say I Rules of law? no. These rules, who are they made by? To this question, to find any positive answer is possible or not, as it may happen. But what is not only always possible, but always true is—that the person or persons,—by whom these rules, whatever they are, are

made,—is or are, in every instance, without exception, a person or persons, who,—in respect of any part he or they may take, or be supposed to take, in the laying down of any such rules,—have not any title to make law, or to join in making law.

The sort of person, whose case, among those who have not a title to make law, comes nearest to the case of those who have, is a *Judge*. But no law does any Judge, as such, ever so much as pretend to make, or to bear any part in making.

What, if passed, he would take upon him to say he does is—to *declare* law: to declare what, in the instance in question, is law: to declare that a discourse, composed of such or such a set of words, is a *rule of law*. Thus speaking, he would be speaking the words put into his mouth by Blackstone.

Meantime,—be it or be it not, a *rule of law*,—here at any rate is a rule, which, having been made, must have been made by somebody. What is more, not only has it been made, but, by some Judge whose duty it is to give to real laws the effect of law—the effect of a law, as if it were a real law, has been given to it. The effect? and what effect? exactly the same as if the words which it is composed of were so many words, constituting the whole or a part of some really existing law.

In the words in question, the rule in question, was it then ever declared before?—If *not*, then in truth and effect, though not in words, the Judge, by whom this rule is declared to be a rule of law, does, in so declaring it, and acting upon it, take upon himself to make a law: to make a law: and this is the pretended law he takes upon him to make.

If it *was* declared before, then not having been made by a legislator, it

must have had for its maker some person, be he who he may, of whom thus much is known, viz. that, in the matter in question, no right had he to make law: for its maker, either some Judge—that is, a man who does not pretend to have any right to make law; or some other man who was still further from having any such right than a Judge is.

At any rate, not having been made by any one of your respective legislatures, this thing then, which, by your Judges and your other lawyers, is passed off upon you as and for a *rule of law*, viz. of English Common Law—if not by a Judge, by whom then was it made? for *laws* do not make themselves, any more than *snakes* or *scourges*.

Of all persons, who, on the making of it, can be supposed to have had a part, the only individual, in relation to whom you can have any complete assurance of his having had a part in the making of it, is a *Printer*: the *Printer*, by whom the first printed book in which it was to be found was printed.

But, though it is not without example for the man by whom a book is printed to have been himself the author of it, examples of this sort are comparatively rare. In the ordinary case then, here you have *two* persons, who have, each of them, borne a part in the making of this discourse which is palmed upon you for law: two persons, who to you, let it never be forgotten, are both foreigners.

This book then, on what ground is it that the author and the printer together can have thus taken upon them to pass it off—to pass it off in the first place upon *us*,—in the next place (such is your goodness) upon *you* as and for a book of law?

First or last, the ground—at any rate the most plausible ground that

can be made, comes to this. A portion of discourse, said to have been uttered by some Judge—by some Judge, on the occasion of some decision pronounced by him in the course of a suit at law. Of this description, take it at the best, was, or in the book was so said to have been, this pretended *rule of law*: a pretended rule of law, made, or pretended to have been made, by a functionary, who, as such, neither had, nor (as you have seen) could so much as have pretended to have, any right or title to make law, or so much as to bear any part in the making of any one law.

Yet, in relation to law, be he who he may, this Judge not only claimed a right to do, but has an indisputable right to do, something. What is this something? Take, in the first place, to render the matter intelligible, the case of the only real sort of law. *Statute Law*: and suppose that the sort of law under which the Judge is acting. What in this case is it that, in relation to this same law, he has to do? By some person—say a *plaintiff*—the Judge has been called upon to do something at his instance: something at the charge of some other person who, if he opposes what is thus called for, becomes thereby a *defendant*. *Why is it that I am to do this, which you are thus calling upon me to do?* says the Judge: *Because* (says the plaintiff) *a law there is, which, in the event of your being called upon by a person circumstanced as I am, has ordained that, at the charge of a person circumstanced as the defendant is, a person, circumstanced as you are, shall so do. This law says so and so:* look at it here if you have need: *it is a discourse* which is in print; and to which, at such or such a time, by the constituted authorities, whose undisputed right it was to do so, was given the name and force of law.

Hearing this, or to this effect, the Judge (the facts on which the plaintiff grounds himself being regarded as proved) the Judge, does he do that which by the plaintiff he is thus called upon to do? What he thereupon and thereby declares—declares expressly, or by necessary implication, is—that the portion of law, in virtue of which the plaintiff called upon him so to do, is a portion of law made and endowed with the force of law, by an authority competent so to do: and that of this discourse the true sense is the very sense which the plaintiff, on the occasion of the application so made by him, has been ascribing to it.

Thus doing, what is it that, in current language, the Judge is said to have been doing? *Answer: pronouncing a decision*: a judicial decision: in particular a judgment, or a decree. Sometimes it is called by the one name, sometimes by the other: whereupon, in virtue, and in pursuance of this decision, if need be, out goes moreover in his name an *order*—a *writ*—a *rule*:—sometimes it is called by one of these names, sometimes by another:—but if it be a *rule*, nothing more than a *particular* rule, bearing upon the individual persons and things in question:—at any rate, ordering the defendant to do so and so, or ordering or empowering somebody else to do so and so at his charge.

That you may see the more clearly what is done under sham law, herein above then you have an account of what takes place under real law.—Well now, suppose *Statute Law* out of the case, what is done is done then in the name of the *Common Law*. In this case then, observe what there is of reality, and what there is of fiction. What, in this case, supposing the matter contested really has place, is, as in the other case, a *decision*: a decision pronounced by a Judge: say by that

same Judge: a decision, by which expression is given to an act of his *judgment*, followed by an *order*, or what is equivalent, by which expression is given to an act of his *will*. The *order* is but *particular*: the *decision* is in the same case.

But, to justify him in the pronouncing of this decision, something which men are prepared to receive as law is necessary. *Real law*, by the supposition there is none: fictitious law must therefore be feigned for the purpose. What does he then?—As above, under the name of a *rule of law*, either he makes for the purpose a piece of law of his own,—or, as above, he refers to, and adopts, and employs for his justification, a piece of law already made, or said to have been already made, by some other Judge or Judges.

What must all this while be acknowledged is—that, setting aside the question of its propriety and utility in other respects—if, so far as regards *certainty*,—viz. on the part of the decision, *certainty*, and, on the part of those persons whose lot depends on it, the faculty of being *assured* before-hand what it will eventually be—a decision grounded on this sham law were upon a par with a decision grounded on Statute Law, thus far at least it would come to the same thing; and it would be matter of indifference, whether the rule acted upon were put into the state of *Statute Law*, or kept in the state of *Common Law*. In that case, for determining the utility, of the proposed operation called *Codification*, the only question might be—as between the two sorts of law—which of the two, their respective *sources* considered, afforded, generally speaking, the fairest promise of being most conducive to the universal interest?—that, which, at the present time, in contemplation of the exigencies of the present time, would have for its authors Citizens of

the State, mostly natives of the country,—chosen by the rest of the Citizens, in like manner mostly natives,—or that which, in the course of several hundred years, was made at different times by from one to five persons, every one of them appointed by a Monarch—by a Monarch, under a constitution, of which, even in its most improved state, the yoke was found by you to be so grievous, that, at the imminent peril of your lives and fortunes, and, by the actual sacrifice of them to no small extent, you resolved to shake it off, and shook it off accordingly.

Thus much as to what, for illustration sake, may be conceived to have been the case. But alas! look to what is really the case, the more closely you examine into it the more clearly will you perceive, that even on the ground of certainty no comparison will this sham law be able to stand with real law. Yes: as well in point of *stability* might you compare the waves of the ocean with the rock they beat upon, as in point of *certainty* Common Law with Statute Law:—with this only genuine sort of law, which it is here proposed to substitute throughout to that spurious sort.

Suppose then, my friend, whoever you are,—suppose that, on the strength of this or that supposed *particular decision*, or this or that *general rule*, by the advice of a lawyer whom you have consulted, a suit at law has been engaged in by you, either in the situation of plaintiff, or in the situation of defendant: for simplicity sake, say in that of plaintiff: if in that of defendant, the same or the correspondent observations will still apply.

In appearance, suppose this decision ever so clearly decisive in your favour. Observe how many and what chances there are of its proving insufficient: insufficient, and by rea-

son of its insufficiency occasioning you to lose your cause. Observe the list of *objections*—observe the alledged grounds or causes of *invalidation*; grounds or causes more or less pe-remptory, through which it has to run the gauntlet.

Of the rules in question so improperly called *rules of law*, the sources are, as above, *decisions*: of these general rules, particular decisions: from preceding decisions come rules, and from these rules again succeeding decisions.

Out of these rules and decisions are made *treatises* and *abridgments*: *treatises*, containing, with or without rules, argumentation about rules; *abridgments*, containing alledged rules, with or without—commonly without—the argumentation out of which the rules were spun, and in which they were drowned.

The books, in which are contained the decisions said to have been pronounced on each individual occasion, with the argumentation by which they are said to have been preceded, and the rules which in the course of that argumentation are supposed to have been laid down as referred to, are called *Report Books*.

Behold now a sample of the *objections*—of the alledged causes of invalidity or insufficiency, on the ground of any one of which, much more of all of them or a number of them together, the decision or supposed decision, on which the confidence of your advisers rested, may by the Judge be found to be insufficient: insufficient, in such sort that in consequence of the alledged insufficiency, you will lose your cause. Behold them, if your patience serves you, here below.*

* 1. If there be but *one* Report book in question, the reputation of the Reporter not *positively* high in the scale of accuracy.

2. If there be *two* Report books reporting the same

Thus in the case of Common Law.
In the case of Statute law, of all these

cause, and giving statements in any material particular different,—of that which is in your favour the reputation in the scale of accuracy not so high as of that which is against you: if, on either side, or on both sides, conflicting Reports more than one, confusion and uncertainty proportionable.

3. The whole aggregate of the relevant facts not sufficiently stated: if it had been, the decision, or the rule, would not have been, as it now appears to be, in your favour.

4. The matter in dispute was not of such value, as to have engaged, either on the part of the arguing Counsel on the side opposite to yours, or on the part of the Judge, a degree of attention sufficient to warrant the placing any such reliance on the decision, or the rule, as is or can be adequate to your purpose.

5. On the side opposite to the decision, or the rule relied upon by you, the Counsel was not of such known ability, as to have brought out against it all the objections that might have been brought out.

6. Of the point, on which the particular decision in question was grounded,—the importance, with reference to the ultimate result of the cause to the parties, was not so great as to have attracted to it, on the part of the Counsel as above, or the Judge, a portion of attention adequate to the purpose: with reference to the principal point, this collateral point was either altogether irrelevant, or but collaterally and weakly relevant.

7. 1. In case of unanimity real or apparent, the *reputation* of the Judges in general, or of the presiding Judge, was but low:—low, viz. either in the scale of *probity*, or else in the scale of intellectual *aptitude*.

8. 2. In the particular class of cases in question, without prejudice to probity or intellectual aptitude, the state of the times was such, as would naturally be productive of a too favourable prepossession, in favour of the decision or rule on which you lean.

9. 3. In a case of known want of unanimity, the reputation, of the Judges, by whose preponderant suffrages the decision on which you bear was pronounced, or the rule laid down, was not so high in the scale of reputation, as that of the Judge or Judges who were on the opposite side.

10. 4. The opinion of the Bar was in general decidedly and notoriously adverse to the decision, or the rule, on which you lean.

11. The printed and published decision in question, overruled by an unprinted and unpublished one, the Report of which is inaccessible, and even unknown, to every man, but the one, who happening to be possessed of it in manuscript comes out with it, if it happens to suit his purpose; otherwise not.

12 to 21. In case of decisions, two or more, pronounced, or rules laid down,—whether at the same time by judicatories of equal authority, or at different times by the same judicatory,—some favourable to you, others adverse,—in this case, while the above objections are opposed to those which are in your favour, the grounds of confidence, respectively opposite to these objections, may, in many of the instances, be employed in support of such decisions or rules as appear to be against you.

22. Thus stands the matter in England, and thence in your several American United States. In any one of these States, add the ulterior source of doubt and uncertainty to your prejudice, which may have place, in respect of relevancy to the state of law and society in these States in general, or in your own in particular.

sources of uncertainty and insecurity what is the number that can have place?—Not one. In the case of Statute Law, no law can ever come into competition with any law of posterior date.

To the necessary *uncertainty* of Common Law, add now its equally necessary *incorrigibility*: incorrigibility, as in relation to all other points of imperfection, so in a particular manner in relation to this. Imperfections in Statute Law are continually cured by Statute Law: imperfections in Common Law can never be thoroughly cured by Common Law. By Common Law they *can* not be cured: and by Statute Law it has never been the *fashion* to cure them. Without the concurrence of Lawyers, Non-Lawyers in the Legislature would not know how, or would be afraid to attempt, to cure them: but, to Lawyers, to bestow any such concurrence is not, generally speaking, by any means pleasant. In *Common Law*, they behold, as you have seen, the Goddess of their idolatry: by any thing that contributes to the lessening of her glory, they have nothing to gain, they have much to lose.

By Common Law, I say, imperfections in Common Law never can be cured. By every attempt made at any such cure, whether for the moment the particular mischief in question be or be not excluded, general *uncertainty*—a disease, with which as with a palsy, the whole frame of this fictitious body is shaken—is a sure result. If, by the judicatory in question, on the occasion in question, the authority of the decision or the rule in question can be overthrown, so by this same or any other such judicatory may any other: in this way may the authority of the whole system of Common Law be shaken: shaken, and with it, in so

far as the contrariety is known, the confidence hitherto so generally, but always so unwarrantably, reposed in it.

To save it from this reproach, recourse has been had to one or other of two expedients; viz. *forced construction*, or *distinction*.

First then as to *forced construction*. Upon the phrase employed in giving expression to the decision or the rule in question, the Judge puts a sense of his own, such as no other man upon earth would have thought of putting upon it. But, by this remedy, the disease, instead of being cured, is aggravated. The more extensive a man's acquaintance is with the language of Common Law, the greater the number he finds of these *forced constructions*: and the greater the number of them thus found, the better grounded, and naturally the stronger, is the general assurance thus obtained, that the whole of the field over which the dominion of Common Law has extended itself, has been thick sown by her with man-traps.

Thus much as to *forced construction*. Now as to *distinction*: taking a *distinction* as the phrase is.

In a Statute Law, on the occasion of every rule there laid down, a sort of caution, which by the penman is observed of course, is—to ask himself whether his purpose requires that the rule should be conformed to throughout the whole of the extent which the words of it import,—or whether, to give a correct expression to his meaning, there may not be this or that *exception*, that requires to be taken out of it: and if yes, set down of course is the description of all such particular exceptions, in the train of the general rule. This being the case, one good consequence is—that whatsoever notification is given to the general rule, is given—

and at the same time—to all the several exceptions, by which its extent is limited, and its import fixt.

Such being in this respect the case under Statute Law, observe now how it is under Common Law. Open a book of Common Law,—be it Report-Book—be it Abridgment—be it Treatise,—among rules by dozens and by scores, scarcely will you find one, but what, if it be not itself an exception to another, or even if it is, has exceptions tacked to it. But those exceptions—at what time was it that they were respectively tacked to it? At the time of laying down the general rule? No: but each of them at a different time: on the occasion of this or that one decision was the *general rule* laid down: on the occasion of so many different decisions, pronounced each of them at a different point of time, these *several particular rules*.

When an exception of this sort is applied to, or rather taken out of, a rule,—thus it is that a *distinction* is said to be *taken*. But, to the possible number of these distinctions never can there be any adequate assurance of an end. What is the consequence? that in the whole body of rules, such as they are, of which this Common Law is composed, seldom can you find one, which is not pregnant with deceit and disappointment. Say that, here or there, this or that one there may be, to which at no time *any* exception,—or, if exceptions have been attached to it already, any *ulterior* exception,—would ever be attached. But, whatsoever just ground for confidence to be reposed on might be framed by these few trust-worthy ones, is destroyed by the multitude of untrust-worthy ones, with which they are encompassed and confounded: I say, confounded,—for to the trust-worthy ones no *ear-mark* is there, whereby they can be distinguished from the untrust-worthy ones.

To apply this general matter to your own particular case, my friend, as above supposed.

First, see how you may be disappointed and ruined, by means of a *forced construction*. The decision or the rule upon which, as above, your leaning was, is, as it stands, clearly in your favour. But, authorized by a practice so extensively pursued and so familiar to every body,—the Judge, to compass his object, whatever it may be, has recourse to the expedient of a *forced construction*: he puts a new, and till then never imagined, sense, upon the words, either of this very decision or this very rule in which your trust was, or of some other, which, by this means, is set in opposition to it, and enables him to destroy the effect of it.

Next, observe how you may be put into the same sad case, by means of a *distinction*. Taken in its generality—taken in the whole of its extent, with the exception of one particular part—the Judge sees nothing to object to in the particular decision or the general rule on which you rely. But, upon a close view of it, he sees reason to *take a distinction* that is, to take out of the general rule a particular case, to which it seem to him that it ought not to be considered as extending: which particular case is exactly the case in which you stand.

Such might be the uncertainty of the law—such the insecurity of the citizen under it—even if the whole mass, of the matter of which it is composed—of the matter in which these rules are contained, or out of which they are deduced—were at all times in the hands of every body. But in this respect, how stands the fact? In your country more especially, neither the complete stock of *data*, nor any thing approaching to it, is in the hands of any body. Volumes, by scores, by hun-

dreds, not to say by thousands,—dollars, by thousands not to say by an thousands—would be necessary to complete it:—in a word, a complete *law-library* would be necessary: nothing less. Whether, even in this country, in which this immense mass of deusive learning has its source, in any one hand any one such collection is to be found, is more than I would undertake to say: what I *would* undertake to say, and without much fear of contradiction, is—that in no one hand would any one such thing be to be found in all your United States, on the day at which these letters are landed.

If even, in each of your United States, not one only but half a dozen hands, each of them possessed of such a treasure were to be found, what would the Citizens at large be the better for it? The result would be a monopoly: a monopoly of this necessary of life,—a monopoly, with this half-dozen of monopolists sharing in it.

Suppose even, that in the day, for example, on which this letter of mine is landed, a large library thus complete were in the house of every lawyer in all your United States,—even in this miraculous case, what would any one of those your lawyers, not to speak of the rest of you, be the better for it? By the next arrival comes a cargo of fresh English-made law, by which to an indefinite extent the anterior stock of law is superseded: some of the general rules, *completely* overturned and superseded, by rules of equal extent, or by rules of greater extent in which they are included;—others, cut into and superseded *in part*, by distinctions and exceptions.

Even if it came from a legitimate source—from hands competent to make law—thus incapable of being known, even to your lawyers, would this English Common Law be: thus incapable are they of knowing it: they,

whose profession it is to know it, and who, on pretence of knowing it, take payment of you for communicating to you what they thus pretend to know.

But, if such is the case with those who pretend, and are thence supposed to know it,—what, my friends, must *your* case be,—you who, knowing but too well that you neither do know it, nor of yourselves are capable of knowing it, have no other means of keeping yourselves safe from the perils with which you are encompassed by it, than by repairing, on the occasion of each question, to one of these your living Oracles, and asking him what it is *he* knows or thinks about it?

Great as it is, the perpetual state of insecurity, in which you are all kept by this imposture, is not the only mischief produced by it. From the *uncertainty* comes not only *insecurity* but *corruption*: *insecurity*, in the situation of the *non-lawyer* — *corruption*, of at least a most powerful and perpetual temptation to it, in the situation of the *Lawyer*, and in particular in that of the *Judge*.

In most of the instances, in which under Common Law a case has been seriously argued, the Judge might, without reproach to his probity or his judgment, have pronounced a decision opposite to that actually pronounced by him.—In the character of a well considered maxim, the fruit of long meditation, operating upon long experience, from how many mouths, without communication with one another, has it not happened to me to hear an observation to this effect? no such conception at the same time appearing to have been entertained by the author, as that by this observation any sort of reproach was cast upon this spurious sort of law, or upon any man from whom it ever received support or eulogy.

No cause ought ever to be given up

as desperate! First from the mouth of Wedderburn—and in these very words—was that aphorism brought to me, presently after it was uttered. Wedderburn was at that very time in office; soon afterwards,—under the title of Lord Loughborough, surmounted afterwards by that of Earl of Rosslyn,—Lord High Chancellor of England, head of English law.

In your country—not to speak of this—the power which is thus in every instance *arbitrarily*, is it ever in any instance *corruptly* exercised? This it is not for me to say; for it is not possible for me to know. This however I will take upon me to say—that, for corruption, supposing at any time a man disposed to give himself to it, the head of man could not conceive, nor the heart of man desire, a more efficient cloak: and that, under it, whatsoever corruption has not place, it is to the individual, not to the state of the law in this respect—or, if to the state of the law, not to the state of this part of the law—that all thanks are due.

True it is, that under the worst system of judicature imaginable, some points there would always be, too clear to admit of wrong decision without infamy. But, in regard to the bulk of those, which, in the present state of judicature—whether among us or among you—come actually under debate,—if, being a Judge, my object were to gratify undue favour, prejudice, antipathy—even lust of gain, so it were without need of communication between myself and the party—no difficulty should I find; and if, being in possession of supreme power, it were my desire that Judges should have the faculty of acting corruptly for ever in their hands, no means so effectual could I find,—as that of ordaining, that, throughout the whole field of law, the rule of action should be and continue every where in the

state of *Common Law*, no where in the state of *Statute Law*. For my own part, considering the nature of man on the one hand, and the state of the law on the other, I do not see how it is possible that corruption—corruption of this necessarily unpunishable kind—should not, in every country, to the extent of the dominion exercised by Common Law, be in no inconsiderable degree frequent.

To any Judge not known to me—to any Judge individually taken—nothing of corruptness can I impute, in my own mind, on the score of his acting under the system in question, thus favourable to corruption as it is. But, not altogether easy would it be for me, in my own thoughts, to exempt from the imputation of corruption the mind of a Judge, who, with this picture before his eyes—this picture of the invitation given by the system to corruption, should persevere in any such endeavour, as that of putting an exclusion upon any measure, which, without being pregnant with mischief in any assignable shape, should afford a promise of making any sort of advance towards the ridding the community, be it what it may, of so pestilential a nuisance.

After all, when corruption, on the part of the Judge, is spoken of as a thing distinct from uncertainty on the part of the law, only to the *cause*, or perhaps to the *quantity* of the effect, does the distinction apply,—not to the *nature* of the effect.

For argument sake, suppose every Judge, without exception, were corrupt: wherein would ultimately consist the real mischief?—wherein, but in this, viz. that no man could possess any tolerably firm assurance, but that, by means of this corruption, he remained continually exposed to injury: to injury, in every shape and without redress.

Well: though in degree it be extreme, *in specie* all this is but *uncertainty*:—*uncertainty* of the law—and nothing more.

Away with exaggeration—away with indiscriminating antipathy. A scourge as it is now, this sham law—time *was* when it was a blessing: nay, in a certain point of view it will be seen to be a blessing even *now*.

You have seen what it is made of, and how it has been made,—viz. from particular decisions, general rules deduced by Judges and others: by the authors or by others, those rules, before printing was in use, accidentally committed to writing,—after that to printing,—and thus made public: every tittle of it made by individuals, not one of whom so much as pretended to have any such right as that of *making law*. But in those same days,—improper as was the language, by which any such name as *law* was given to them,—these rules, such as they were, were by no means without their use. Decisions and rules together, they formed—not only a *light*, by which the paths taken by succeeding Judges were lightened,—but a *barrier*, by which they were in some degree kept from going astray. In the character of a *barrier*, the effect they produced was in some sort, however imperfectly, the effect produced by *real law*: in the character of a *light*, howsoever faint, and frequently false, they produced another good effect;—and *that* of a sort very scantily and irregularly, if at all, produced by *real law*. Ever and anon, by *reasons*—by reasons such as they were—and not always bad ones—a ground was made for these rules; and, along with the rest of the matter, these reasons were made public: made public—and *that* at a time, when little or nothing in the shape of reasons was visible, in the character of an accompaniment to any

portion of *real law*.

Antecedently to the appearance of these lights, what was the state of the rule of action, and of the citizen under it? Every decision was completely arbitrary: every Judge had to begin afresh: no improvement in judicature; no art, no science, because no experience: no materials out of which grounds for law—for *real law*—could be made.

With the *decisions* were necessarily recorded, the *cases* by which decision was called for: for example, the sorts of *offences* capable of being committed: the sorts of *contracts* capable of being entered into: the sorts of *incidents*, by which, to one or other of the parties, or to the public at large, the contract was capable of being rendered unexpectedly injurious: the sorts of *titles*, by which a reasonable claim to property, was capable of being produced or put an end to.

A library, composed of the books in which these cases are thus brought to view—such a library—even though there were not so much as a single *law* in it, is at any rate a rich storehouse of materials for legislation: such a storehouse, that without it no tolerably adequate system of laws could be made. The more ample the stock,—so it be not to such a degree vast that the mind is lost in it,—the more effectual the provision made, made for this most necessary and arduous of all intellectual works.

The greatest quantity of wealth, possessed in this shape by any other nation, is penury, in comparison of that which has been furnished by English Common Law. In this point of view, it is a blessing even now. As a light to the legislator, to assist him in the making of *real law*, it is a matchless blessing—this sham law: as a substitute to *real law*, now that the times are ripe for the making of

real law,—in this character indeed, though in this character only, is it a curse.

Time was, when, for want of recorded experience, the pen of the legislator could find no tolerably adequate indications for its guidance. Time was:—but that time is now at least at an end. Yes.—In comparison of the practice of deciding each individual case purely on its own ground, without regard to *consistency* in relation to former decisions, and without looking for *guidance* to any lights derivable from former ones,—the practice—of resorting to memorandums, made, of the purport of former decisions, and of the circumstances in which they were pronounced,—was doubtless, notwithstanding the looseness and untrustworthiness so frequently exemplified in those memorandums, a vast improvement. But, on no grounds can the advantageousness of this practice be demonstrated, but on those same grounds the superior advantageousness of the form of *real law*,—in comparison of the conjectural and fictitious substitute, framed by imagination out of those same materials,—will be rendered ten times more strongly and clearly visible.

Every man his own lawyer!—Behold in this the point to aim at.

Why every man his own lawyer?—

1. Because no man's interest is as dear to his lawyer as it is to himself.

2. It is not every man that can afford to pay a lawyer.

3. No man, how rich soever, can have a lawyer always at his elbow.

Every man his own lawyer?—Yes:—but who shall make him so? not he himself, as would be the case, if, instead of lawyer, you were to say *taylor*, *shoemaker*, or (as may be seen in the title of a book) *broker*. One sort of person there is, by whom, so far as the nature of things allows,

every man may, and by whom alone any man can, be made his own lawyer: and that is *the legislator*. I say, *so far as the nature of things allows*. For, let the legislator have done his utmost, still the possibility of a man's being his own lawyer will depend on the nature and situation of the man. As to more or less of the law, to some will always be wanting the necessary *talents*: to any one, may at any time be wanting the necessary *time*. No business can be mentioned, in which it may not incidentally be more for a man's advantage to carry it on by proxy, than to carry it on himself. To so universal a rule, assuredly no exception can be afforded by law business.

No: never can the profession of a lawyer be wholly superseded: never, at any rate, the office of a Judge.

But, in the impossibility of attaining the summit of perfection, no reason can be given for not aiming at it: by every step, made towards it by the legislator, a blessing is bestowed.

Take in its utmost extent, the mass of legislative matter with which, in the country in question, the universal interest requires that the field of law shall be covered—take any portion of it whatsoever,—what is necessary is—that such part as the pen of the draughtsman finds in the state of *Common Law*, and such part as it finds in the state of Statute Law, should, without any distinction, be cast together in one mass. What part he finds in the one state—what part he finds in the other—what part of the field, finding it as yet unoccupied by both, he sees reason to cover with new matter—in no instance need any trace of distinction be exhibited: none at least in respect of the *form* given to the matter: howsoever, in the way of note, intimation may be conveyed of the distinctions which once had place. Accidental as these distinctions are—

the boundaries shifting place from day to day—no use can there be in keeping them on foot.

All this while, let it never be out of mind—that, in no case, by any part of the authorized rule of action can any good effect be produced, any further than as it is *known*: to no part of it is it possible to be made *known*, any further than it has been made *complete*.

As to the arrangements which have been made, and would be employed, for securing to the mass of law in question, as far as it goes, so essential a property,—considering the limits necessary to be set to the length of this address—and the situation of by far the greatest number of the eyes for which it is designed,—the giving any tolerably intelligible indication of them would not here be possible.

In a work, published as long ago as the year 1802, composed I know not how many years before, a survey, which for this purpose had been taken of the whole field of thought and action, may be already seen. Three thousand copies of that work are abroad: in countries more than one, not only by individuals, but by the constituted authorities, signal have been the marks of approbation bestowed on it: no where any fault found with it.

Yet by no government, in no nation, in or for the penning of its laws, does any such all-comprehensive survey appear to have been made. Indeed, to an unaccustomed eye, no wonder should the operation present itself as an impossible one. But, by helps derived from the useful part of logic, works of this kind—as by helps derived from algebra, works of calculation*—may be executed, such as without such helps would indeed be impossible.

* See Chrestomathia, Part II. Appendix, No. V. Table V.

To your proffered workman, this part of the task has long ceased to present so much as the idea of difficulty: so long has he been in the habit of contemplating, in this point of view, objects of all sorts and sizes. For the purposes of *Public Instruction*, in a work,—a copy of which the Governor of your State has, it is hoped, in his hands ere these letters can have reached yours,—the whole *field of thought and action* has again been actually subjected to a survey of this kind: in a Table, in which an outline of the result of that survey is brought to view, it may be seen how comparatively small a portion of that universal field can properly be taken for the *field of law*.*

* With the contents of this note let no eye trouble itself, to which the matter of law in all its forms, as well as the *tactical* branch of the art and science of logic, is not already familiar.

§ I. Political scheme of division.

1. GENERAL CODES, to one or other of which, every particle of the whole mass of the matter of law, is, in every State, capable of being referred. 1. The *Penal*: 2. The *Distributive*, or, as it is commonly called, the *Civil*: 3. The *Constitutional*: 4, 5, 6, Correspondent Codes, each of them containing a branch of the law of *Procedure*—subordinate and subsidiary, or, as they have been styled, *adjective* branches, respectively belonging to those principal ones: *judicial procedure*, belonging respectively to the *Penal* and *Civil codes*: *investiture and divestiture* procedure, having regard to the official situations which come in question in the *Constitutional Code*. Examples of SUB-CODES, capable of being, and wont to be—under so many different titles, detached from the abovementioned three principal ones: 1. Code of *POLICE*; 2. Code of *COMMERCE*; 3. *MILITARY Code*; 4. *MARITIME Code* or Code of *NAVIGATION*; 5. Code of *FOREIGN RELATIONS*, or *INTERNATIONAL Code*, &c. &c. The description, of the matter thus detached, is determined—either by the subject to which it applies, or by the species of useful business which it has in view. To the number of these detachable Codes there are no certain limits.

§ II. Logical scheme of division.

II. Logical aspect of the law towards the several modes of human action; considered as capable of being taken for the subjects of its ordinances.

1. Antecedently to all legislation applied to the portion of the field in question, the aspect may be *obligative* or *un-obligative*: in other words, *active* or *inactive*, *imperative* or *unimperative*, *coercive* or *uncoercive*: if *obligative*, *mandatory* or *prohibitive*: in either case, *unconditionally* so or *conditionally*.

2. Subsequently to legislation applied to that same portion of that same field, the aspect, if before it was *obligative*, may be either *confirmative* or *de-obligative*; and, in either case, *unconditionally* so or *conditionally*, as above.

§ III. Re-

LETTER V.

III. *Of Justifiedness, as applied to a Body of Law.*

THIRD and last of the qualities herein-above brought to view, as being indispensably to be desired in the aggregate body of the laws, *justifiedness: justifiedness*, a quality which, supposing the reasons adequate, will, in so far as the application of them extends, be given to it by an accompaniment of *reasons*.

No:—it suffices not, that in itself the matter of the laws be throughout of a *reasonable*, that is to say of a *useful*, quality; in the degree, in which it might be, and therefore ought to be, it cannot be so, unless it be *seen*,—and thence, unless it have been *shewn*,—to be so. But, useful it cannot be seen to be, but in proportion as the *considerations*, by which, in the character of *reasons*, it has been proved to be so,

§ III. *Relation between the Political and the Logical schemes of division.*

In the *Penal code*, is and will be to be found most of the matter the aspect of which is *obligative, imperative, coercive*: the most part of it *prohibitive*: in the *Civil code* most of that matter of which the aspect is *unobligative, unimperative, uncoercive*; and of that, of which in either case the aspect is *conditional*: also in the *Constitutional Code*, most of that matter of which the aspect is *conditional*: so likewise in the several Codes corresponding to the several branches of *Procedure*, as above:—the case being, that the effects, which, by the respective portions of *substantive law* are respectively appointed to take place, take place accordingly or not, according as, in the character of *conditions*, the *formalities*, which, by the correspondent portions of *adjective law*, are to that purpose *appointed* to be conformed to, come *in fact* to have been conformed to.

In and by each of these two abovementioned *schemes of division*, the whole field of *law*,—and for that purpose the whole field of *thought and action*,—has been surveyed, and subjected to a mode of division, which, in the instance of the *logical scheme* at least, is *exhaustive*.

In so far as it is *obligative, imperative, coercive*, of every portion of law the fruit is *evil*: the enactment of the law is an infringement upon *natural liberty*: and, of every such infringement, in a quantity more or less considerable, *pain* or *uneasiness* is apt to be the result. Under the principle of *utility*,—or say, of *regard for the universal interest*,—in this instance, as in all others, to justify the production of evil, it is necessary that in some *shape* or other, good be produced, and in *quantity* such as to make up for and *outweigh* the evil. On this ground alone in any instance can any demand have place, for the

not only have been brought to view,—but, in the instance of the person in question, at the very time in question, are actually in view. Let this be granted,—it follows, that no mass of the matter of law is what it might be, and therefore ought to be, otherwise than in so far as, throughout the whole extent of it, it is furnished with a correspondent *body of reasons*, for its accompaniment and support.

Note well the variety of characters, in which,—to or with reference to the several descriptions of persons, to whose lot it falls, in various ways, to have concern with the several parts of the *body of the laws*,—a correspondent *body of reasons* would be of use.

I. To the Citizens at large, considered separately in their character of *subjects to the law*: persons bound respectively to conform their conduct to its ordinances. To men considered in this situation, the body of *ordinances* being supposed already constructed, a correspondent body of *reasons* would serve in the double capa-

addition of fresh *obligative* matter to the already existing stock.

To scrutinize,—for the purpose of proving, disproving, or illustrating,—the truth of the above position, is an exercise which, as it might seem, might be not without its use—to the student in legislation, or to the student in general logic.

To perform any such exercise, an exertion altogether necessary will be, *that*, whatsoever it be, which shall be requisite to overcome the repugnance, which, especially in a field in which so much bad produce has been already raised, attaches itself to the use of new appellatives: for, unhappily, in so far as what is *true* and *useful* is at the same time *new*, at no less price can useful truth, in any considerable quantity, be taught or learnt. Correspondent throughout are the state of men's notions, and the state of their language: all language is originally incorrect: and by language which is incorrect, in so far as it is so, no correct ideas can be either communicated to, or entertained and anchored in the mind. Of every man,—in proportion as he acts in pursuance of any such resolution as that which we see sometimes taken, viz. never to give acceptance to new names—the mind will continue replete with mischievous error and nonsense, while other minds are clearing themselves of those incumbrances, and stocking themselves with the opposite treasures. Of a word originally innoxious, seldom has a more pernicious abuse been made than has been made of the word *purity*: say at any rate as applied to *language*: not to speak of it as applied to *morals*.

city of an *anchor* and a *compass*: of an anchor, to fix the details of it in the memory: of a compass, to point to the true sense in case of doubt. In a former Letter, the *main text* of the *ordinative* part was stated as being capable of serving in no inconsiderable degree, in quality of an *anchor* to the *expository matter*. But, to fix it in the memory, the main text itself stands in need of an anchor: this anchor will be found for it in the accompaniment of *reasons*. Composed, themselves, of considerations having regard to the universally exemplified, and universally recognized, principles of human nature, viz. *feelings and desires*,—these reasons have *their anchor* already prepared in every human breast.

II. To the *legislator* (for simplicity of conception, let us consider the whole body of the legislature as one man)—to the *legislator*, considered on the occasion of his entering upon the task of framing the body of the *ordinances*—a correspondent body of *reasons* would serve in the several capacities of an instrument of *guidance*—an instrument of *salutary restraint*—and an instrument of *support*—say a *compass*, a *barrier*, and a *support*:—in so far as it happens to him to be well disposed, in the character of a *compass*, to point out to him the right path: in so far as it happens to him to be ill-disposed, a *barrier*, to prevent him from swerving into any wrong path; in so far as being well-disposed, it may happen to him to find himself, in respect of his ordinances, subjected to accusation at the hands of a part of his fellow-citizens, in the character of his constituents,—an instrument of *support*, to justify him in the sight of the whole.

III. To the *Judge*, considered on the occasion of his being about to engage in the task of grounding a decision, and thereby putting an interpre-

tation, upon this or that article in the body of the *ordinances*. In the same three characters, in which the body of *reasons* has just been seen serving, when applied to the situation of the legislator, viz. *compass*, *barrier*, and *support*,—in the same characters may it be seen serving, when applied to the situation of the Judge.

IV. To the Citizens at large, considered in their character of *sensitive beings*. In this character it would be to them a source of *security* and *tranquillity* of mind. Such will this *rationale* be to each Citizen, when considered as an *anchor*, serving to fix the *ordinative* part on his mind:—thereby preserving him from the dangers, liable to be produced to himself, whether by unintentional deviation, on *his own* part, from the path of rectitude and safety, as marked out by the law; or, by deviation from the like path, in the several instances of the *Legislator* and the *Judge*, for want of that *guidance* and *restraint*, which it affords to their respective situations as above.

What difficulties will not such an instrument be seen to throw in the way of arbitrary power, wheresoever seeking to intrude itself, whether in legislation or in judicature!

V. To *Citizens at large*, considered in the character of moral and intellectual agents, and in particular at the time of life allotted for the receipt of *instruction*. To the extent of that part of the field of action, over which the arm of the law shall have extended itself, it will serve in the additional character of a *lesson-book*: a book of *instruction* in the art and science of *morals*.

To the art and science of *morals* belongs the indication of the sorts of acts, by which, in the various situations of life, the universal interest is served or disserved,—or in other words, ge-

neral happiness in all imaginable ways increased or diminished. Of the sorts of acts by which it is in the *highest* degree diminished, the description will have been, under the several names of *offences*, given in the penal and civil Code taken together, more especially in the penal. Under one or other of two heads, viz. *Rules of perfect obligation* and *Rules of imperfect obligation*, have the *Rules of Morality*—the whole aggregate of them—been wont to be ranked. Those, the general observance of which is most indispensably necessary to the *being*, as well as *well-being*, of society, are the rules of *perfect obligation*: and these are *rules of law*.

VI. To *public functionaries* in general—i. e. to such of the Citizens, by whom, at any given point of time, any of the situations comprehended under that name are occupied or expected to be occupied—and in particular to all such by whom any such situations are occupied, as those of Members of the Legislature in any one of your United States, it will, in proportion to the extent of it as above, supposing it to be what it will aim at being, serve as a *Book of Instruction* in the *art and science of legislation*.

VII. To *Electors* in general—i. e. to such of the Citizens, by whom at any given point of time, the right of suffrage is possessed, with reference to the filling of such of the above situations as are or shall have been filled by election, it will serve in like manner in that same character, viz. that of a *Book of Instruction*: a book, from which they will receive assistance, towards forming whatsoever judgment it may respectively happen to them to feel disposed to form, respecting the degree of appropriate aptitude, possessed with reference to the several official situations, by the several candidates.

In the situation of *legislator*, think

how urgent is the demand for an accompanying instrument of this kind, as a security for the goodness of his ordinances—for their universal subseriency to the universal end which they ought to have in view:—as a perpetual standard of reference,—to be consulted—in the first place by *himself*, in the next place by his *constituents*: by himself, while occupied in the framing of these same ordinances; by his constituents, while occupied in judging of them. Without this accompaniment, a law is not necessarily any thing more than a mere expression of *will*: only by means of such an accompaniment, can any proof be given, that to any such faculty as the *understanding*, exercise has been given in the fashioning of it. Without this accompaniment, fashioning the ordinances themselves is work for any man: so he have but the *power*—the *political* power—no driveller so weak in mind as not to be capable of executing it: the same hand, which in one moment has been employed in embroidering a robe for the Holy Virgin, may the next moment be employed in the penning of a law, consigning to death and torture the miscreant in whose eyes the exactness of its fitting shall be matter of dispute. Give a man but the power, be his *will* ever so flagitious, be it ever so foolish, *words* may be found for the expression of it: and, no sooner are they found, than they become *words of law*: and no sooner does the law thus made become *law*, than knaves by thousands, and fools by millions, not content with submitting to it, fall down and worship it.

Such throughout, but for such an accompaniment, may be the body of the ordinances under which a nation groans: on the other hand, suppose the body of the laws furnished with such an accompaniment, and that accompaniment such as it ought to be and

might be, he by whom it has been framed must, by the very supposition, have been, reference had to the time at which it was framed, to say the least, among the ablest of the able as well as among the wisest of the wise.

Suppose it then not only fashioned but in use: and now, with a mischievous or foolish law in his eye, in the situation of member of the legislature, suppose a man wishing to bring it into existence. To what course can he betake himself? There exists the *rationale*, bearing against him and his desired law perpetual testimony. Either in the whole, or in the particular part in question, he must succeed in the endeavour to remove this bar,—or, so sure as the wished-for law is proposed, the force of the bar will be brought to bear upon it, and pulverise it.

A law—any law—how can it be a good one, any further than as, in support of it, good reasons can be given? A man, who, speaking of a law, should take upon himself to declare it to be a good one, and as such supported by good and adequate reasons,—what credit can any such assertion of his be entitled to, if he has not those same reasons to produce?

Note here, that not with any thing less in view than a complete body of the laws, can the sort of accompaniment in question be fashioned, with any near approach to full and adequate advantage. Stationed at a certain degree of proximity to that universal end in view, which constitutes the ultimate and universal reason of all laws for which any good reason can be found—stationed at this point of altitude, and thence occupying the correspondent portion of extent in the field of law, *reasons* assume the character and the name of *principles*. Suppose that, no such *principle* being as yet established, a set of ordinances

in detail are brought forward, and to them is added an accompaniment of reasons: what will be the consequence? Set down as they are without any all-comprehensive plan—set down consequently without any stations respectively fixt for them in any such plan,—*clearness, correctness, completeness, compactness, consistency* in design, and *uniformity* of expression—all these essential qualities would be wanting to these reasons. In this state of things, fortunate indeed will be the law to which they are attached,—if, taken all together, they are not frequently productive of erroneous practical results: in a word, if, in consequence, the laws, of which they form the accompaniment, are not, to an amount more or less considerable, productive of evil consequences.

If, on any one point whatsoever, any advantage, how slight soever, could with any colour of reason be ascribed to *Common* in comparison with *Statute* Law, it would be on the ground of the sort of *argumentative* matter of which the mass of Common Law is composed, and which has no place in Statute Law. The remark has been already made. As in a dunghill here and there a grain of corn, so in a volume of Common Law here and there a grain of genuine reason—reason derived from the principle of general utility—from a regard to the universal interest—may be found. But, into the proposed body of law, the grain alone, none of the excrement will be admitted: no fictions: no technical reasons: sound grain, and nothing else: a sample has, as above, been under the eye of Europe these last fifteen years.

As to the addition, that would thus be made to the *bulk* of the body of the laws, let it not be an object of alarm to any one. The more *extensive* the view taken of the field of legislation, the more *clear* and *correct* it may be:

the more *extensive, clear, and correct*, the more *consistent, compact*, and thence *concise* it may be: for, how often does it not happen, that by some one general observation the need of a multitude of observations of detail is superseded? True it is, that, be the part of the field what it may, *limits*, to the degree of conciseness, capable of being given, to the discourse expressive of the reasons belonging to the ordinances for which the public interest presents a demand, cannot but have place: but, small indeed will the quantity be found, in comparison of what might be expected by any workman, who, on taking measure of it in his mind, should look for a pattern, either to the debates of a legislative body, or to the argumentations delivered in a judicatory, on a ground of Common Law.

To the survey itself, of which the proposed accompaniment of *reasons* would be the fruit,—the quality in question, viz. *all-comprehensiveness*, was, as far as faculties permitted, actually given. It will not have been for want, either of endeavour bestowed, or of time occupied, should any failure in respect of the accomplishment of this object be discovered.

In and for that part of the field of law which is occupied by *Constitutional Law*, the result of an attempt, made about the year 1809, towards laying a foundation for an appropriate Code, has just been laid before the English public: viz. in the short tract intituled *Plan of Parliamentary Reform*: published in May, 1817. To this, in and for matters of detail—to this, as far as it goes, considered at any rate in the character of a sample, reference might be already made. In the French language, for the *Civil* and *Penal* branches of law, a sample of a work of this sort, though in a state not complete enough in respect of ex-

tent to serve for any thing more than a sample, has already been before the public for these fifteen years. To give to it not only additional *correctness* but *completeness*, towards which ulterior advances have long ago been made, would be among the objects of the labours here proposed and offered.

LETTER VI.

Opposing Interests—Interests adverse to the Acceptance, as applied to an Offer of this nature.

ESSENTIALLY defective would be this address, if, after explaining the nature of the offer it is intended to convey, it were to omit altogether to present to view the *interests*, which, supposing it ever so advantageous, an offer of this nature cannot but find opposed to acceptance.

Stranger as I am to every thing that is individual in your country, I not only am, but shall be clearly seen to be, under the happy impossibility of having had individuals in my eye. *Situation*—from that source alone will be drawn the observation of any such particulars, as on this occasion it seems necessary I should remind you of. In any thing, therefore, that follows, no individual can behold any cause of personal offence.

“ *To satisfy yourself beforehand*
“ *what, on a given occasion will be*
“ *the course a man will take, look to*
“ *the state of interests.*”—Be the class or body of public men to which a man belongs what it may,—of public men—not to speak of other men—for a clue to the conduct, which ought to be expected at his hands, this is what, in one of my lately published works* has been ventured to be proposed in the charac-

* *Plan of Parliamentary Reform*. London, 1817. Introduction, §. 18. p. cccii.

ter of a universal rule. True it is, that, in the case of this or that particular individual,—this or that particular situation, by bringing into play this or that particular interest which happens not to be exposed to observation, may, in appearance at least, afford an exception to that rule. But, what on the present occasion belongs to the question is—not how it will be in regard to a few individuals, but how it will be in regard to the majority.

Unfortunately for the interest of the majority of the people of all classes taken together, the interest of the great majority of the body composed of the men of law—say in one word the interest of *the man of law*—is, throughout the whole field of law, with very inconsiderable exceptions, in a state of hostility—irreconcilable hostility—with that universal interest. From the law in its present state, mischief—and *that* such as in its own nature is not incapable of being excluded,—is continually flowing into the community in most unhappy abundance. Of this mischief it is of course the interest of the community that every particle should be excluded: but, of this same mischief, with exceptions to a very inconsiderable amount, not only is it the interest of the man of law that every particle should remain unexcluded, but that it should at all times receive as large an increase as possible.

We have a doctrine here—that it is wrong to say any thing that can tend to weaken the confidence of the people in public men: so that when the state of things is such, that the interest of public men is in a state of opposition to that of the people, it is wrong to give intimation of the existence of any such state of things. With us this aphorism has been uttered not only with grave faces but to grave faces: grave would not be the faces, to which

in any assembly in your Union any such lesson were delivered.

In your country, or in any other, exists there that person, to whom the opposition between the universal interest and the particular interest of the man of law can be a secret?

No surely: not upon reflection. But, in this as in so many other instances, of that of which no man need be informed, men in general may every now and then need to be reminded.

That,—under a body of law, in great part fictitious and spurious, and as to that portion which is not so, in no part, unless by accident, either known or knowable by any one whose fate depends on it,—that, under such a system, uncertainty as to the treatment he will eventually receive at the hands of the ministers of the law—*uncertainty*, and on that account *insecurity*, is an undeniable consequence,—has in the course of these letters already, it is hoped, been pretty well put out of doubt:—*insecurity*, in respect of almost every one of the possessions, on which *being* and *well-being* depend.

But—“*To the glorious uncertainty of the law,*” in the character of the *lawyer's toast*, to whom is this adage unknown? and, of the proposition implied in it, in whose eyes was the truth ever matter of doubt? By what man, even among men of law, was it ever desired? Suppose it uttered in the character of a jest: by being uttered in good humour, does truth change its nature and become falsehood?

1. Advising Counsellor—2. Pleading Counsellor—3. Attorney—4. Conveyancer,—behold in these the several characters, in one or more of which the professional lawyer acts. In every one of them,—such of you, my friends, as are not lawyers,—examine and consider, whether his interest be not

opposite—irreconcilably opposite to yours. In every one of them—in this, as in every other profit-enticing occupation—is it not a man's interest to render the sum of his profits as great as possible? But—his profit, whence is it but out of your loss, that it comes? Is it not therefore his interest—not only where he has the whole of the profit, that *that* profit, and thence your loss, should be as great as possible,—but also, where he has but a limited part of it—say for example a tenth—that that *part*, and thence the *whole*, out of which it is to be extracted, and in proportion to which it increases, should be as great as possible? thence, rather than that, for example, he should not gain his *ten*, you should lose your *hundred* dollars?

As in other instances so in this, is it not the interest of the existing dealers in any article, not only to have if possible the monopoly against all other rival dealers in that same article, but also against all persons, who but for the monopoly might, instead of *customers* for it become *makers* of it, each for his own use? Is it not then the interest of the man of law, that, for his benefit, it should, by as many men as possible, be found impossible for them on the several occasions above indicated, to conduct their own affairs? Is it not then his interest to render it, and keep it, impossible for them—each for himself, and of himself—to know what, on each occasion, will be the treatment he will eventually experience at the hands of the Judge? and, in consequence of this impossibility, is it not his interest to render it and keep it necessary for them, if time admits, to repair to a lawyer for advice? and, if the time does not admit, or they have omitted to apply for such advice, to render them still severer sufferers, viz. by this or that suit at law, to which the errors, they have fallen into

for want of such advice, have given birth?

Of this monopoly, behold then in few words the two objects: 1. Means of *being* and *well-being*, as far as dependent upon law; 2. Means of *safety* against the perils of the law.

In the case thus described is not *every* sort of man, who has any thing to sell, whether it be goods or labour? labour on whatsoever subject employed? In the occupation of *lawyer* can any circumstance be found, by which his mind is exempted from being acted upon by those same *springs of action*, by which, in the instance of every other occupation, action is determined? If not, then is it not true, that the more eminent the degree, in which any scheme of legislation promises to be conducive to the acknowledged ends of all legislation, the stronger is the interest by which he is excited to use his utmost endeavours to oppose it?

True it is, that, like every other sort of man, the lawyer has his share in the universal interest: in that interest, by which a man stands engaged to wish, that in his own instance the rule of action may be as effectually conducive to its acknowledged purposes, and thence as completely as well as correctly *known*, as possible.

But, on the other hand, what you will not fail to observe is—how much greater, generally speaking, to each individual lawyer, the value is of his share in that *particular* interest, in which, in his quality of a *lawyer* he has a share,—than his share in that *universal* interest, in which in his quality of *human Being* he has a share. From that ignorance of the law, from which, in respect of the management of their own affairs, non-lawyers have so much to suffer, he, in respect of *his own* affairs, is, by the supposition, comparatively speaking, and in his own opinion.

at least, exempt: and, as for any ignorance, under which, in respect of the management of the affairs of his *clients*, it may happen to him, by the inscrutability and uncognoscibility of the laws, to be condemned to labour,—generally speaking, the *client* alone, not the *lawyer*, will be the sufferer by it. As to the lawyer, so far from being a sufferer, in so far as the effect of the error produced by the ignorance is to produce more business, he will be a gainer by it. True it is, that, in so far as it may happen to the *client* to perceive that there has been *error*, and that it is at the door of the lawyer that the error lies, the lawyer may, in the article of reputation, be a loser. But thus to see into the secrets of the law is not the lot of every man: in particular of every man who is not a lawyer.

Of the whole field of law, what is that part, by the improvement of which the man of law has, upon the balance, most to gain or least to lose? *Answer*—The *Penal* branch. Why the *Penal* branch? *Answer*—Because it is *that* branch, in which, in a more particular degree, depends the protection endeavoured to be afforded, against such injuries, as in their nature are most afflictive, and to which, in every situation, man is more or less exposed. Take for example *depredation* in its coarsest forms: such as, theft, highway-robbery, house-breaking,—murder, on the occasion of either. On the one hand, the offences here in question having their source in *indigence*,—on the other hand, individuals of all classes—the indigent not excepted—being exposed to suffer by them,—hence the sufferer is very likely, and the injurer almost sure, to have but small means, if any, for purchasing professional assistance. While, from delinquency in those shapes, as a man, he has as much as any man to suffer,—as a lawyer, the man of law has less to

gain from it, in those shapes than in any other. A consequence is—that, supposing it possible to keep completely separate from the rest of the law these particular parts, or even the whole—of the *Penal* branch,—what might very well happen, is—that, as it would be his obvious *interest*, so would it be his real *wish*, to see the rule of action improved to the utmost. But, scarcely is any such perfect separation possible. Not only between all the several parts of the *Penal* branch, but between the *Penal* branch and the *Civil* branch, both taken in the aggregate, the connexion is most intimate: too intimate, to admit, in the sight of eyes naturally so jealous, any adequate assurance that improvement begun in one place could be there brought to such a stand, as to be prevented from ever extending itself any further.

True it is, that particular cases may be supposed, in which, in his situation, no peremptory bar would be found opposing itself to his concurrence, or at any rate to his neutrality, in relation to the supposed benefit. But that, in any considerable proportion of the whole number of instances, any such agreeable suppositions should be found verified, you will judge, my friends, whether it be not rather too much to hope.

Among such of your men of law as are either Members of your Legislature, or possess an influence more or less considerable in elections,—take any individual for example: call him, as in one of our plays he has been called, *Mr. Eitherside*.

An offer, of the nature of that in question, being made to your State, *Mr. Eitherside*, supposing him to take a part in relation to it, will he support it or oppose it? Such being the question, the answer will, on each occasion depend upon the proportion

which in *Mr. Eitherside's* eyes has place between the value of his share in the universal interest, and the value of such part of his share in the particular interest of the profession, as is at stake upon the acceptance or rejection of the offer.

Suppose, that, in relation to the universal interest, acceptance, if given, does, in his eyes, afford a promise of a net benefit,—the following may be stated as the cases in which, the sinister professional interest notwithstanding, it may happen to him to be desirous of being contributory to the giving of such acceptance.

1. If, on the one hand, in his eyes, the public benefit be so great, and on the other hand the private and personal loss so small, that the value of his share in the public benefit promises to be greater than that of his share in the profit from the public mischief.

2. If, in his eyes, such is his own individual position, that, by the benefit expected to the public from such acceptance, *no* reduction will at any time be produced, in the amount of his individual share, in the professional profit, resulting from the public mischief, in the diminution of which the expected benefit would consist.

3. If, though *some* reduction may have place, yet—so small is its greatest amount, so distant the probably nearest time of its taking place, and so great the uncertainty whether it will take place at all,—at the same time so great the reputation to be gained by giving support to the measure, so great the disrepute to be incurred by making opposition to it,—that the giving support to it will, upon the whole, be the most advantageous course he can pursue.

It is more pre-eminently in the general character of a *precedent*—whatsoever it may be in its own particular character—that, in proportion as it is

good, every thing that is good is,—to every sort of man whose particular interest is hostile to the universal interest, and in particular to the man of law,—an object of terror. *Principiis obsta—set up the bar at the threshold*—is of course the motto of such men.

Sharp enough, of course, with *us*, are the eyes of the man of law, in their look-out after every thing that threatens them with reform or improvement: anxious enough their endeavours to keep it out. With *you*, one circumstance there is, the tendency of which is to give additional strength to those same propensities. Among you, with the exception of what you have derived from us, every thing that regards government is on so good a footing,—and consequently, upon the whole, that proportion of abuse which remains still unextirpated is, comparatively speaking, so small,—that nothing can be more natural than that this “*rest, residue, and remainder*,” as they say in the law branch of the flash-language, should be cherished and defended, with a degree of pertinacity proportioned to its scantiness.

Yes: the more *closely* the field of law is looked into, the more clearly perceptible will be the opposition of interests, which on this ground has place, between such of you as are lawyers, and (to employ a useful phrase I have observed in books of American growth) the *balance*: the balance composed of *non-lawyers*, or—as lawyers say or at least used to say—*lay-gents*.

Look back to the three *qualities*, held up to view as essential *endowments* of a *complete* and *adequate* body of law, viz. 1. *Notoriety*, or rather *intrinsic aptitude for notification*; 2. *Completeness*, including complete extirpation of *Common Law*; and 3. *Justifiedness*; i. e. the quality conferred by an adequate accompaniment of *reasons*. Not one is there of these instances,

in which you will not find—that, the greater the degree in which this endowment is possessed by any proposed body of laws, the greater will be the injury done to the particular interest of the correspondent body of professional men, in so far as their prosperity is dependent upon their practice.

1. *Aptitude for notification.* That which the lawyer lives by the sale of is—law-knowledge or the semblance of it: of this necessary article the larger the stock which each man is enabled to receive from the only pure and genuine source—viz. the law itself,—the less the need he has of resorting for it to any such impure and inadequate source.

2. *Compleatness.* The further the rule of action is from having been rendered complete, the further it is from being capable of being made known—each part of it, to every man who has need to be acquainted with it: and, the greater the degree, in which the extension given to real law is accompanied by a correspondent extirpation of Common Law, the greater the degree in which true are substituted to false and deceptive lights.

3. *Justifiedness.* In the body of the laws scarcely can that disorder be found, against which, with a degree of efficiency more or less powerful and immediate, a well compacted accompaniment of reasons will not, as you have seen, operate as a remedy: scarcely at the same time a disorder, from and with which, in proportion to its acerbity, the profit of the man of law does not receive its increase. Moreover, with the spurious sort of law, from the interpretation of which lawyer's-profit is, so large a portion of it, derived, is mixt up all along a quantity of argumentative matter, uttered under the name of *Reasons*. True it is, that of this matter, some portion is composed of *genuine* reasons:—reasons derived

from the principle of utility:—from the consideration, of the effect of the species of action in question, upon *human feelings*—upon the *universal interest*. *Technical*, however, to use the name by which among themselves they speak of them—*technical* are the sort of *reasons*, of which the great mass of this same argumentative matter is composed. But wherever, conjoined to the word *reason*, you see the word *technical*, for explanation of the word, add, or substitute—for so you may do with little danger of error—the words *absurd* and *dishonest*: *absurd* in its *nature*, *dishonest* in its *cause*, viz. in respect of the end or object with a view to which it was framed. At the head of the list of these same reasons, may be placed *law fictions*: a sort of article, which may be defined—*lies, devised by Judges to serve as instruments of, and cloaks to, injustice*:—injustice in various forms, and in that of usurpation of power in particular.

Now, suppose a complete body of *Ordinances*, and for its support a correspondent *Rationale*, composed of *Reasons*, introduced by *principles*: a body of reasons—complete, consistent, and compact, into which no reason drawn from any other than the only pure source—the fountain of *general utility*—were admitted. In comparison of these genuine reasons, how would they appear—those spurious ones—to which lawyers have given currency one among another, for the purpose of passing them off for genuine upon their customers? What would *then* be the emotions they would excite? Awe and admiration as at present?—No: but scorn and abhorrence.

Not that from all that has been said, any such conclusion follows, as that, in a preponderant and prevalent degree, thus adverse to the universal interest is the interest of every indivi-

dual lawyer among you, without exception. All that follows is—that so it is, in so far as his dependence in pecuniary matters is on his profession,—and barring all *particular* circumstances, which may happen to intervene, and give an opposite direction to the force of interest. Say that a lawyer has no interest in the uncertainty of the law,—as well might you say, that a gunpowder-maker has no interest in war, or a glazier in the breaking of windows.

Of the particular circumstances here alluded to, one there is, which, in its application, is confined to that sort of lawyer who is in possession or expectation of a seat in one of your legislatures. If, in his view of the matter, the offer promises to find favour in the eyes of his constituents, and that to such a degree, as that, in the event of his voting for the rejection or neglect of it, he will not, at a future election, be numbered among the objects of their choice:—at the same time that in his eyes the value of his official situation is greater than that of the quantity of emolument, which, by acceptance given to the offer, would at the long run be cut off from the profit of his practice.

On this occasion I will venture to put it to you,—whether, of the strength of the claim which any representative of yours can have upon you for your confidence,—the magnitude of the interests which you have at stake on the use made of the offer being considered,—there can be a clearer or more instructive test, than the sort of countenance which he shews to it.

Such then, in relation to the grand point in question, is the state of interests. And—not to speak of individuals individually taken—taking men in bodies, what is their conduct ever determined by, if it be not by interest?—the balance, on the account

taken by each man of his own interests?

Your representatives at large—whence happens it that, in that all-commanding situation, their conduct has, in relation to every thing but the state of the law, been so uniformly conformable to the interest of their constituents? Whence, but because by your matchless constitution it has been made their interest to keep this conformity inviolate.

So far as concerns the state of the *imported* part of the law, this conformity has not, at any rate in any thing like an equal degree, had place. Why? Because, though in most other instances, in the event of his sacrificing your universal interest to his own particular interests, it would be in your power to punish a representative by withdrawing from him that confidence, in the continuance of which his continuance in such his situation depends; yet, for not having either brought, or used his endeavours to bring, the general mass of the law into a better state than it is in at present, it would not be in your power thus to punish him: at least consistently with any regard for justice. Why? Because, among men in general, the importance of the sort of work in question seems not as yet to have been sufficiently understood:—because what is every body's business is nobody's business:—and because, until some prospect had been opened, of a measure, from which, with a reasonable expectation of success, a work of this sort might receive its commencement,—no one individual, in whom the blame of omission could, with any sufficient reason, be made to attach, was presented to view by the nature of the case.

But, though there exists not any one, whom, *antecedently* to the making of the offer in question, it would have been competent for you thus to punish,

—on the one hand, now that such an offer *has* been made, whether in the event of his receiving it with opposition, or even with indifference, there be any one from whom you need scruple to withdraw your confidence, is a question which lies before you.

In the exposure thus made of this sinister interest, and of the state of temptation, under which those who are partakers in it are, on all occasions, kept by it,—may be seen the elogium—the uncontradictable elogium—of all those, if any such there be, in the texture of whose minds there shall be found a force of principle, strong enough to oppose to it an effectual resistance.

To no man can it be matter of just reproach that his situation is such as exposes him to temptation. Be the temptation what it may, the act or line of conduct to which a man is invited by it being by the supposition mischievous, the stronger the temptation the greater his merit if he resists it. In the observations which you have just seen, every lawyer by whom any sincere assistance shall have been afforded to this offer, may, in this Letter behold a *testimonial*, of the merit manifested by him in the rendering so high a service: and, whatsoever may be said against the *judgment* thus exercised by him, the *probity* manifested—manifested by the self-sacrifice—will at any rate stand unquestionable.

If it be true, that, at the height to which the state of government in your country has already risen in the scale of excellence, no *ordinary benefit*, of the number of those for the receipt of which it has room still left, can be equal to the *extraordinary benefit*, which, supposing the rule of action put upon the proposed footing, would have place,—so, in the situation of representative, neither could any *ordinary*

service be capable of coming into competition with the corresponding *extraordinary service*.

The completion of the work would it be at best remote?—in any sensible degree the production of the looked-for good effect still more so?—even the very commencement of it, all chances considered, precarious?—well, if so they be—the greater the degree in which all these things are, the less is the detriment which each such professional man has to apprehend, on the score of his professional and personal interest, while the glory, of contributing in this way to the advancement of the universal interest, is, from the first moment, at his command.

Such are the *interests*, to the hostility of which a measure of the sort in question is doomed to find itself exposed. I wish it were equally in my power to put you as effectually upon your guard, against the *weapons* to which, on an occasion such as that in question, the war of words is wont to have recourse. Those which I have in view rank under the general name of *fallacies*.

By the word *irrelevancy*, may by far the greater number of them be designated: be the measure on the carpet what it may, they are *irrelevant* to it: they bear no particular relation to it: and of these irrelevancies, *personalities*, of which there are also various kinds, form no inconsiderable part.

Impracticable and *mischievous*—*mischievous* and *impracticable*: this is the conclusion on which, be the measure what it may, opposition is apt to begin or end. In the course of my own observation, to what multitudes of measures have I not seen them applied!—measures, of which the utility has afterwards been certified by unquestioned experience.

On the present occasion, the essential thing is—to engage your attention

to the nature of the *particular object*, to which, if at all, these epithets will have to apply. It is nothing more than this:—in relation to the proffered body of proposed law, on the part of the House of Representatives, a *Resolution*, engaging them to receive it, and take it into consideration. This done, and the work received—and, on any one day, taken into consideration accordingly,—the very next day, if not approved of, the whole together may for ever be put aside.

This done, all is done for which I stipulate. To say what mischief can ensue from this, seems not to be a very easy task. In the event in question, the natural course for the Assembly to take would, I suppose, be—to order the work to be printed for the use of the Members. But in this case there would be expense:—an expense, to which, if in the eyes of those to whom it belongs to judge, the work affords not an adequate promise of being useful to their constituents—those same constituents should not, by any act of their Representatives, be subjected.

To no such expense, however, do I call upon the Representatives of any State to subject their constituents. On the contrary, without any expense to them, other than that of conveyance (this being without the reach of any calculation of mine) I hereby offer to present, to the Representative Body of any State, a number of printed copies exceeding that of its members: the copies to be delivered here in London, to any person commissioned by the competent authority in the State to receive them; reserving to myself only the right of reducing the number presented to each, should this offer find acceptance at the hands of more than one.

In return, no such state will, I hope, grudge me the present of a printed *Almanac*,—or by whatsoever name the

work be designated,—by which, if any such thing be in existence, the *Official Establishment* of the State, with the expense belonging to each of the several situations contained in it, is brought to view. My wish is, in the most detailed and demonstrative manner, to contrast the principles and practice, in so exemplary a degree established in your happy Commonwealth, with the system of regulated ———, which is here called *government*:—with the waste and corruption, that characterizes the system of that government; and which, every time I think of it, fills my mind, with a mixture of shame, and melancholy, and indignation.

LETTER VII.

Testimonies, as to the Species of Work here offered, and its Utility.

AT the outset I submitted to you, my friends, some testimonies in favour of the present proposal and its author. The time is now ripe for adding to them a testimony or two in favour of the *work*. I mean the *species* of work: testimonies, by the light of which,—even supposing the execution ever so much inferior to what I cannot but flatter myself you will expect to find it,—you will see, in the very nature of the work, how much you have to hope from it.

Of these testimonies, the body of Statute Laws, established in France by *Napoleon*, is the main source. They consist, in the first place, in the recognition made of the utility of the species of work by the *restored* authorities: and this, notwithstanding the inferiority of the individual work, in comparison with that, of which, in case of acceptance given to this my offer, you cannot but stand assured:

inferiority, and that, as you will see, rendered palpable by reference made to those objects, which, in the composition of a work of this species, I hope I may now say ought indisputably to be in view;—viz. the *three qualities*, of which, in the third, fourth, and fifth, of these Letters, so particular an explanation has been given.

To come to particulars.—In France, there you may see they not only had, but still have, the *Corps de Droit Napoleon*: the body of law, designed probably to cover, when completed, whatsoever portion of the field of action was intended to be covered by law; and actually comprehending Codes more than one, and of the three main branches actually covering two: viz. one, called the *Civil* or *Code Napoleon*,—another, called the *Penal*, together with the corresponding Codes of *Procedure*; not to speak of the *Code de Commerce*, and others branching from those two, or coming within the field of a *Constitutional Code*. Now then—be it as it may, in regard to the *individual* works—such in this instance was the *sort* of work—so great the benefit acknowledged to be derived from it—so great the mischief that would have been produced by the restoration of the chaos to which they succeeded,—so it is, that the restored authorities, on their restoration,—notwithstanding the intensity of their desire to obliterate, as far as possible, every trace of the intervening changes,—felt the necessity of abstaining, and abstained accordingly, from the destruction of this the most important of them all:—this vast remaining monument of now extinguished power and energy.

With whatsoever horror the government of Napoleon, considered in a constitutional point of view, may, by so large a proportion of the think-

ing part of the population of that state, be regarded;—by some, in respect of the damage to the interests of the ruling few—by others, in respect of the injury to the interests of the subject-many,—scarcely should I expect to find a Frenchman, of any party, to whom the reality of the service done by this work, to all interests, would be spoken of as matter of doubt.

The service thus acknowledged to have been rendered, in what then can it be found to consist? in which of the *three capital qualities* herein above brought to view?

1. Not in intrinsic aptitude for *notoriety*, as explained in my Letter on that subject: not in intrinsic aptitude for notoriety, except, in so far as is necessarily included in the substitution of real to imaginary law: an advantage which belongs to the next head.

2. Not even in *completeness*: in advance made, as above, *towards completeness*, yes: but nothing more. No such idea brought to view, as that it would be possible, by any survey taken of the *field of thought and action*, to trace out the portion which it might be proper for government so to take possession of, as to convert it into the *field of law*.

3. Not in any degree in *justifiedness*, as above explained.

That, in respect of *intellectual aptitude* and *active talent*, it was not in the power, of the draughtsman employed by Napoleon to give those qualities to their respective works, might be too much for a rival to take upon himself to pronounce: those to whom it belongs to judge may judge. But, that the necessary *political power*, and consequently the *will*, so to do, was wanting to them, may without hesitation be affirmed. In every explicit *reason*, attached to any expression of his *will*, Napoleon would have seen a chain—a chain put upon his *power*.

Not even to any arrangements, if any such there were, in the penning of which he had no other end in view than the furtherance of the universal interest, would he have suffered *reasons* to be held up to view. Why? Because, if introduced into *any one* part of the whole body of law the operation of *giving reasons* would naturally have been looked for, in the instance of *every other*: but, in the instance of no part of any body of law, in and by which a sacrifice is purposely made of the universal interest to the particular interest of the *ruling one*, or to that of the *ruling few*, can any appropriate and adequate body of reasons, be found—any body of *reasons*, that,—if not of and in itself,—at any rate, by the observations it would call forth, would not in effect counteract the design that gave it birth.

To the ruling power, in every government but such as yours, every application thus made of the faculty of reasoning is therefore, in the very nature of the case an object of horror. It is, and will ever be so, in every pure Monarchy: it is, and ever will be so in every Aristocracy: it is so in this government, which, in substance and effect is become a compound of Monarchy and Aristocracy: of Monarchy and Aristocracy, with a thin coat of Democracy remaining on the surface, sufficient for the delusion, but not sufficient for the protection, of the people.

You have been seeing, what every body has seen—what the *Cromwell of France* actually did for *France*. Behold now what, if life had been long enough, the *Cromwell of England* would have done for *England*:

In a conversation with Ludlow, Cromwell said, “That it was his Intention to contribute the utmost of his endeavours to make a thorow Reformation of the Clergy and

“ Law: ‘but,’ said he, ‘the Sons of Zeruiah are yet too strong for us: and we can not mention the Reformation of the Law, but they presently cry out, we design to destroy Propriety: whereas, the Law, as it is now constituted, serves only to maintain the Lawyers, and to encourage the Rich to oppress the Poor; affirming that Mr. Coke, then Justice in Ireland, by proceeding in a summary and expeditious way, determined more Causes in a week, than Westminster-Hall in a year; saying farther, that Ireland was as a clean paper in that particular, and capable of being governed by such Laws as should be found most agreeable to justice; which may be so impartially administered as to be a good precedent even to England itself: where, when they once perceive Propriety preserved at an easy and cheap rate in Ireland, they will never permit themselves to be so *cheated and abused* as now they are.’”*

Behold what was said in his day by *Cromwell*. In my eyes it ranks that wonderful man higher than any thing else I ever read of him:—it will not lower him in yours.

As to the *Clergy*, in your happy country the reformation has already been effected. Remains as and for the only class, in the instance of which any the least need of reform still remains—the class of *Lawyers*. That, in your country, in comparison of what it is here, the quantity of abuse issuing from this source is in no small degree inferior, I am fully sensible: but, so long as any the least particle of mischief, though it were but a single one, is perceptible, why it should continue unexcluded,--unless by

* Ludlow's Memoirs, i. 319: i. 430, ib. iii. 78. Coke's Execution, ib. ii. 717.

the exclusion put upon it, a preponderant mass of mischief can be shewn to be let in,—remains for him to say, who to the desire, seems to himself to add the power, of rendering to his profession and its interest so acceptable a service.

In this same volume (i. p. 436) the last paragraph is in these words:—
 “ In the mean time the reformation of
 “ the Law went on but slowly, it
 “ being the interest of the Lawyers
 “ to preserve the Lives, Liberties,
 “ and Estates, of the whole nation in
 “ their own hands.—So that upon
 “ the debate” [on the subject] of
 “ *Registring Deeds in each Coun-*
 “ *ty, for want of which, within a*
 “ *certain time fixed after the Sale,*
 “ *such Sales should be void, and be-*
 “ *ing so registred, that Land should*
 “ *not be subject to any incumbrance;*
 “ this word *incumbrance* was so ma-
 “ naged by the Lawyers, that it took
 “ up three months’ time before it
 “ could be ascertained by the Com-
 “ mittee.”

Thus, by the particular and sinister interest of the lawyers, was the reformation of the law obstructed. From the same honest pen, behold how, and by the force of what sinister interests, so desirable and admirable an enterprise was soon afterwards finally quashed, (ii. 717.)—“ The Parlia-
 “ ment on their part being sensible
 “ of their danger,” (viz. from the Army; this was the latter end of 1659) “ were not wholly negligent of
 “ the means to prevent it: though I
 “ can not say they gave no advantages
 “ to the Faction of the *Army*, by dis-
 “ gusting the Sectarian Party, and
 “ *falling in with the corrupt interests*
 “ *of the Lawyers and Clergy*, where-
 “ in the Army did not fail to outbid
 “ them when they saw their time.”

The provocation given by the honest lawyer (I mean *Chief Justice*

Coke—not the rapacious pedant, *Sir Edward*—but one whose conduct formed so perfect a contrast to his)—the provocation—I say the provocation, given by this honest lawyer to his brethren of the profession—being thus great, you will not wonder when you find it productive of an adequate resentment. From the same pen hear an account of this Reformist’s end, (ibid. iii. 75.):—“ An order being
 “ made, that the Chief Justice *Coke*
 “ and Mr. Peters should die on the
 “ same day, they were carried on
 “ two sleds to the place appointed
 “ for the execution of the sentence
 “ that had been pronounced against
 “ them, the head of Major-general
 “ Harrison being placed on that which
 “ carried the Chief Justice, with the
 “ face uncovered and directed to-
 “ wards him: which was so far from
 “ producing the designed effect, that
 “ he not only seemed to be animated
 “ with courage from the reflection
 “ he might make upon that object,
 “ but the people every where ex-
 “ pressed their detestation of such
 “ usage. At the place of execution,
 “ among other things, he declared” (p. 196) “ that he had used the ut-
 “ most of his endeavours that the
 “ practice of the Law might be regu-
 “ lated, and that the public justice
 “ might be administered with as much
 “ expedition and as little expence as
 “ possible; and that he had suffered
 “ a more than ordinary persecution
 “ from those of his own profession on
 “ that account.”

Thus far honest *Ludlow*. Behold-
 ing what, in England, not only our unambiguously true Commonwealth’s men, but even our *Cromwell* would have done,—you have beheld the ends which he would have had in view in doing it. But if, in the conception formed by him concerning what would eventually take place in England, he

was correct,—you will see how different a sort of thing the spirit of an Englishman was in those days from what it is at present. Supposing substantial justice established in Ireland, the English of those days would no longer (he concludes) continue to permit themselves to be so “*cheated and abused by the Lawyers*,” as they then were. No: not if a hand such as his—(for to representative government, Cromwell was not like Napoleon, an enemy, but a friend)—No:—not if a hand such as Cromwell’s, had remained to do its part, towards freeing them from that bondage. But now that, between the S—s, the E—s, and the W—s—between those who rule by fraud and those who rule by force—the contract has been completed, the connexion is indissoluble. The spirit, which in those days animated the English is no more. We are content to be “*cheated*”:—we are content to be “*abused*”:—all security is fled from us. I, for example, who am writing this to you, I am at this moment in my workshop; to-morrow I may be in a dungeon: not only friends and books, but pen and ink, kept from me—my small remnant of existence rendered at once a blank and a burthen to me,—lest these my labours, which here are useless, should elsewhere be of use. Yes: all security is fled from us: and not only the security itself, but all regard for it.

No tyranny, under which we are not prepared to crouch, so long as in England, under the ———, *—as at Rome, under the *Cæsars*,--the forms of the Constitution under which it is exercised are, some of them, preserved: so long as the selfish idlers, by whom we are scorned and pillaged, condescend to style themselves our ———, —we care not how gross nor

how notorious the falsehood is, which in that denomination is involved.

Now, suppose that, at this advanced period,—at the presentation of anybody, authority were given in your country,—and *that* with the happiest success,—to a complete body of laws; such as,—according to the character ascribed by the effrontery of Lawyers to the reigning mass of pernicious absurdity,—has, by the testimony of experience, been proved to be the very “*perfection of reason*.” By that character would it in this country stand recommended to the ruling powers?—No:—the more thoroughly would they have been convinced of its having an undeniable title to that same character, the more cordially would they abhor it: the more intensely, according to the humour of the moment, would they either dread or scorn it.

LETTER VIII.

Conclusion. Advantages—Exhortations—Prospects.

IN a general point of view, you have seen, my friends, the state, which the rule of action under which you live is in, *at present*: in the like point of view, you have seen the form which it is *proposed* to give to it.

Turn now to your own condition under it. Consider what it *is* under the law as the law is: consider what it *would be* under the law, as it is proposed the law should be.

1. In respect of *notoriety*, at present,—unless here and there a lawyer be an exception,—scarce any part of the rule of universal action correctly known to any body. 2. In respect of *completeness*, a vast portion of it—no one can say how vast—a shadow without a substance; the deficiency of real

* These Blanks have been left by the Printer.

law being, under a fictitious name, and under false pretences, supplied by *unconjecturable will*, supported by *arbitrary power*. 3. In respect of *justifiedness*, i. e. *proof of reasonableness*, no proof or test, in any quantity or *quality*, worth mentioning, to be found any where: in the only *really existing* branch of the rule of action, viz. *Statute Law*, absolutely none: in the argumentation, mixed up in the *imaginary* branch, in which, under the name of *law*, nothing better than *matter of conjecture* about what is or ought to be law is to be found, here and there indeed a spice of *reason*: but this in so confused a state, and mixed up with such a dose of absurdity—especially of the technical and antiquated cast—that, in no tolerably adequate degree can any one of the functions,—hereinabove-spoken of as exercisable by a consistent and co-extensive body of *reasons*, forming an accompaniment to the proposed body of *ordinances*,—be found performed by it.

Under the system of arbitrary power thus endeavoured to be disguised, observe then, my friends, what your condition is. Under a system of *Statute Law*, suppose it complete, as often as, having in contemplation a certain act, it becomes your desire to be assured what, in the event of your doing it or not doing it, will be the treatment you will receive at the hands of the Judge—under such a system, on turning to the appropriate part in the books of the law, the information requisite is yours. All plain reading: no guess-work: no argumentation: your rule of action—your lot under it—lies before you. Thus might it be—thus ought it to be. As it is, how is it with you? No plain reading: all guess-work: On every occasion, how, in the event of your doing or not doing what is in question, the Judge will deal by you is mere matter of con-

jecture: and, for aiding you in your conjectures, no materials, no documents, have you—within your reach, or at your command.

Such is the state of uncertainty—such therefore the insecurity—in which you live: such the imposture, on the fruit of which every thing that is dear to you remains at all times dependent.

Now, suppose a complete body of *Statute Law*, as proposed, established; all judicature, carried on under the pretence of judging according to *Common Law*, excluded: suppose this, and note well the difference. Suppose not only the original scribe ill-qualified, but even the Censors and Correctors of his draught, all of them, worse qualified than in the nature of the case your legislators can be,—still would your condition be a state of certainty and security, in comparison of what it is at present. Throughout the whole field of action you would have a real, and no longer any imaginary, *standard of reference*: throughout would your *actions* have a real, and no longer a mere imaginary *rule*.

Under a complete system of *Statute Law*, supposing it ever so bad, thus improved would be your condition in comparison of what it is at present.

But, supposing this offer accepted, the body of laws, is it then in any danger of being thus bad?

To the purpose of security against badness in every shape, instead of being the original and principal part of it the work of foreigners, executed in other times,—it will be, the whole of it, the work of your own ordinary servants, executed under your own eyes. Of this work, whatever there is that has difficulty in it, or requires labour, will have been ready roughed out to their hands, by this your supernumerary servant: for each and every distinguishable portion of it the *reasons* will be before them: on the whole, and each par-

ticular part,—*ordinances* and *reasons* taken together,—their province will be to decide: to take whatsoever parts of it it seems good to them to take; to reject whatever parts of it it seems good to them not to take; to insert into it whatsoever matter it seems good to them to insert.

Suppose the whole of it disapproved, and accordingly rejected? You are but where you were. You have every thing to hope—you have nothing to be apprehensive of.

Suppose it approved and established, behold the fruits and consequences. For a *rule of action*, instead of a rule made by *foreign* hands, you will have one—as large a part as you please—made, all of it improved and finished, by the hands of your own agents, under your own eyes. Instead of a shapeless and boundless mass of *argumentation*, you will have a compact and orderly body of *law*; instead of *spurious* matter under the name of law, you will have *genuine* and real law. In a word, instead of a boundless library, and that an inaccessible one,—you will have, for constant use, a few sheets; for incidental consultation, a few volumes:—instead of uncertainty, you will have certainty,—instead of insecurity, security and inward peace. On this great occasion, in this your proffered servant, what confidence will you have reposed? None whatever. In the already commissioned servants of your choice, in those in whom you are accustomed to repose it—in those alone, on this occasion as on all others, will your confidence have been reposed.

Do you still hesitate and look for a *precedent*? So far as concerns the exclusion of Common Law, you have one already in your own acts.

You have your *Constitutional Law*: you have that branch of it, in and by

which are brought to view the *powers* exercised, with the accompanying and correspondent *obligations*, submitted to, by the several official persons, of whom, from time to time, the governments of your several *States* are composed; together with the modes, in which the several official situations, occupied by these several individuals, are *filled* and *emptied*. You have that branch of it, which regards the powers and obligations of those official persons, by whom the affairs *common* to all those States are conducted. To the value of this *Constitutional Law* of yours, you are none of you insensible. You hug it to your hearts, as the main source of, and security for, whatsoever you enjoy. Well then: *Statute Law*—*real law*—such is the state, which this branch of your rule of action is in, every tittle of it. Think now how it would be with you, if *this* too were in the state of *Common Law*;—of Common Law, spun,—all of it hitherto, and upon each occasion more and more to be spun on in future,—out of *our* Common Law,—as are, at present, the *penal* and the *civil* branches? Of the whole body of the laws—of the three branches, into which it is divisible—having thus, in the state of a compact and regular structure, this *one*,—how much longer will you endure to see every *other* in the state of a boundless and ever-increasing chaos?

Bad enough is it, in *any* country, to *any* sort of people, on each occasion, to have to hunt for the rule of action, in the breath of no one knows what individual, with or without a lawyer's gown upon his back: an individual of whom thus much only is known, viz. that, even if he had—which he never can have—the *inclination*,—he would not have the *power*—he would not have the *means*—the means in *any* shape—to make it fit for use.

But in *your* land of freedom and good government—to *you* and *your* legislators, freely deputed agents and servants of a free and self-governed people—thus to be perpetually on the hunt for law—thus to have to rake for it in the very sink of corruption—thus blindly to keep on importing a succession of deaf and dumb matter from a country of slaves—what is this but treason against your constitution?

Yes, my friends, if you love one another—if you love each one of you his own security—shut your ports against our *Common Law*, as you would shut them against the plague. Leave us to be ruled—us who love to be thus ruled, leave us to be ruled—by that tissue of imposture: leave us to be ruled, by our gang of self-appointed ————; by our lawyer-ridden, by our priest-ridden, ————: leave us to be ruled, by those ———— who never cease to call upon us to rally round our ————,—that poisoned and poisonous ————, by the *name* of which they have made us slaves.

No: never, never let slip out of your mind this lesson—*wheresoever Common Law is harboured, security is excluded.*

The yoke of English Monarchy—the yoke of English Aristocracy—the yoke of English Prelacy—all these galling yokes—all these mutually interwoven and now foreign yokes—you have happily shaken off. Remains the yoke of the English *Eithersides*, exalted into Judges: the *Common Law*—that tissue of imposture, to which you still continue to yield your necks,—to be pinched and galled, under the hands of one class among you, for whom, while they are comforted, all others are tormented. Day by day it continues,—and, so long as you continue to crouch under it, will continue,—to be more and more bulky—more and more

afflictive—the pressure of this yoke. Will you repel—will you suffer to be repelled—the hand that offers—the only hand that ever did offer—to relieve you from it?

Taking the whole of the field together, either the conception formed of it by this your proffered helper is more *clear, correct, and complete*, than any that can have been formed in relation to it by any one of you,—or his time, to the amount of above half a century, will have been very unprosperously, very unprofitably, expended. But, this expenditure once made,—of *his* conceptions whatsoever, in regard to each part of that same field, may be the *clearness, the correctness, the completeness*,—by *your* conceptions, your position considered—by *yours*, on a great many points, at the first glance, will *his* of course be exceeded: sooner or later, so will it be of course throughout:—in the career of improvement, *you* will each of you begin, at the point at which *he* ended.

Not that, at the end of any length of time, there must of necessity be, in every part, room and demand for change: for, in any instance, suppose that which is best once discovered, and the nature of the case not changed by time, no room for any thing better is any longer left. But as, on the one hand, whensoever you *adopt* a proposed change, you will (I am confident) have some better reason for doing so than that it *is* a change; so, on the other hand, whensoever you *reject* a proposed change, if so it be that the change affords a promise of *improvement*, much more if of *reform*,—if, rejecting the change, you keep to what is established, you will have some better reason for keeping to it than that it *is* established: some better reason than the *wisdom of our ancestors*: that wisdom which, being interpreted, is neither more nor less

than the weakness of the cradle: that wisdom, the worship of which is so readily and extensively joined in by fools and knaves. Yes: if peradventure so it should happen, that, after having been sanctioned by your representatives, any ordinance, originally submitted to their consideration, by this your proffered helper, shall continue to stand approved,—the approbation, he trusts, will have for its cause the goodness of the *reasons* in which that ordinance found its support, not the earliness of the age in which he lived.

The effectual point is—that, at the hand of your Representatives, the *plan*, the *form*, the *outline* of the work, should find acceptance. Among its objects is,—and, if accepted, among its effects will be,—the affording to them, and through them to you all, my friends, the greatest possible facility, for giving establishment, and thence effect, to whatsoever, to them, and thence to the majority of yourselves, shall, on each occasion, and from time to time, seem best. Yes: in this one frame, matters,—of a nature the most opposite, to that which, on each occasion, will to me your workman, have seemed best,—may, according to the successive suggestions of maturer reflexion, and of increased experience, by the light of nearer and closer observation, be inserted: what I would punish, they, and through them you, may leave free, or even reward: what I would reward, they, and through them you, may leave unrewarded, or even punish. Yes: by any acceptance given to my work, your powers, so far from being narrowed, will be enlarged. In the reasons, and the principles on which they are grounded, you will behold at all times the inducements which led to the proposed ordinances to which they are subjoined:—in so far as in your minds those reasons shall

have made the same impression as on mine, you, by the hands of your agents, will give acceptance to the ordinances thus suggested;—in the opposite case, striking out what you find inserted, you will either leave the space a blank, or insert whatever else may seem best in the room of it. *Power* over you, or any of you, I cannot have any—I *would* not have any:—upon your *wills*, only through the medium of your *understandings* can I exercise any the least influence. Yours is the *interest*, and the only interest, at stake; upon each article of proposed law, yours is the judgment, which in each case will ultimately decide.

Whatsoever portion of the work, if any, may, after due consideration applied to each part, have been ultimately approved,—the matter of it may serve, at any rate, for a sort of temporary *resting-place*, to the minds of your representatives: coming from a pen, which cannot have found any sinister interest to misguide it,—and after a length of reflection, greater than any which can have been bestowed upon it by any one of the greater part at least of your representatives,—whatever risk you will run by giving it a sort of provisional and temporary acceptance, can surely not be very formidable: especially considering that, in whatsoever regards *possessions*, the keeping them inviolate will be the leading object which, as I ever have had, so I ever shall have, constantly in view.

Whatever be the opposition made to the preliminary measures thus proposed, one consideration there is that puts in an irresistible claim to notice.

Whoever, speaking of an undertaking of this sort, takes upon himself to say *it ought not to be commenced now*, should be prepared to show, that it ought never to be commenced *at all*.

By every day of delay, increase will be given—on the one hand to the magnitude of the evil, on the other hand to the difficulty of applying the only remedy.

I. *As to the magnitude of the evil.* The evil as you have seen, consists—in the first place in the *uncertainty* of the rule of action, and thence in the *insecurity* of those whose fate is disposed of by it. Of this evil, as far as regards *Statute Law*, the source lies in its *voluminousness* and *want of compactness*: in so far as regards *Common Law*, in the same imperfections, existing in a prodigiously greater degree, with the addition of that *immensity*, by which it is rendered impossible for any man to know whether he has the whole of it, and that *indeterminateness*, by which it is rendered impossible, as to so much as any one particle of it, to know, whether it is or is not law; whether it is or is not a rule, or part and parcel of a rule, by which the decisions of the *judiciary*, and with them the fate of those individuals whose case comes before the *judiciary*, will be determined.

Well then—not to look to fractions of time—where is—where ever can be—the *year*, in which any one of these sources of evil—*voluminousness*, *uncompactness*, *immensity*, *indeterminateness*—shall have failed to bring forth its increase.

II. *As to the difficulty of applying the remedy.* In a work of this kind, the grand point upon which the difficulty turns, is—the having a ground for working upon—an *outline*, within which the whole field of the subject shall be comprehended; an *outline*,—and that traced by a hand, of the competency of which, with reference to the sort of work, there not only shall be, but shall be generally known to be, sufficient reason for entertaining a favourable presumption. I say a hand;—ob-

serve, a *single* hand: for, in the first instance, thus produced must every work of the sort in question be, or it can never come into existence.

Now then at the present instant, so it does happen, that, by a conjuncture of circumstances not very likely to be soon again conjoined, a hand has been brought into view, the whole working time of which—and that already not a short one—has been devoted to the endeavour to render itself, with relation to this same business, a competent one. Suppose then the offer from this hand rejected,—others, affording equal promise, are they likely soon to be seen presenting themselves? Surely, to say within what time any *one* such shall be likely to present itself, will not be a very easy task. This first offer rejected, what prospect of acceptance can, at any future period, present itself to any others of the same complexion? Rejection, in such a case, would it not in effect be tantamount to one or other of two resolutions? viz. either, 1. that the disorder shall continue increasing, so long as the State continues in existence,—or, 2. that the work, whenever executed, shall not be executed in a manner so good, as that in which it might be executed at present.

Whatever be the task in question,—for aptitude as to the execution of it, one security there is, of which the efficiency is indubitable, and *that* is—a relish—a real liking for the work. Of this qualification at least, whatsoever may be the value of it, in the present instance, there will not be much room to doubt. Suppose it wanting, the labour thus bestowed is an effect without a cause.

Utility, *notoriety*, *completeness*, *manifested reasonableness*—of a body of laws,—endowed with all these attributes, each of them in the highest degree, and operating upon the largest scale,—the existence, supposing it rea-

lised, will indeed be a new æra in legislation.

Only at this late period—only at this advanced stage in the career of civilization and mental culture—could so much as the idea of any such work have been brought to view. A sketch of a code of laws, upon a comparatively extensive scale, was brought forward by *Lord Bacon*, and may be seen in his works. So far from *all four*, scarcely of any *one* of these qualities, is any tolerably *clear* conception to be found in it.

A complete body of law (for the sake of finding for it a single-worded name,—let us, until a better can be found, go to the Greek for one, as Botanists do for their flowers, and call it a *Pannomion*)—a *Pannomion* then, if you please, furnished with all these desirable qualities—and in that condition established by competent authority—be it but once exemplified, though it be but in the instance of one single state,—sooner or later, where there is any the least spark of freedom, a man will not for very shame venture, in the same field, to produce a work to which these qualities—every one or even any one of them—are wanting. At present, works thus unworthy of a moral and intellectual agent are produced without shame, because nobody is ashamed of doing that which is done by every body. Be the sort of work what it may, so long as nothing of the sort has ever been produced, the impossibility of producing any such thing will without scruple be asserted: asserted,—and, the more vehement the assertion, the more profound the wisdom, the reputation of which will be claimed upon the strength of it.

Thus would the matter stand at present: such would be the reception given in the first instance to a work of this kind. Suppose it an all-perfect one, such would be the reception given

to it, by those whose interests, or interest-begotten prejudices would be thwarted by it:—given to it, till, after having received somewhere else the touch of the sceptre, it had stood for a while the test of experience.

Let but an exemplification however once appear—an exemplification, though it be but *one*—down goes the pretended impossibility; down the impossibility, and with it that reputation of wisdom, which has for its foundation the mixture of stupidity and arrogance.

In this way it is—that, by the influence of understanding upon understanding—by the force exercised by reason upon reasonable minds—let but *one* of your *twenty* States give acceptance to a body of laws endowed with all these *qualities*,—by that *one*, sooner or later, will it be forced upon the *others*: forced upon them *all*, though by the gentlest of all pressures.

In America thus will *Reason* spread her conquests. As for that quarter of the world, from which shame is banished—in which, in the name of Christ, the *subsistence* of the *subject many* is, with such indefatigable devotion, made a constant sacrifice to the *luxury* of the *ruling few*—in which all men are governed, by those who, feeling themselves, are determined to keep themselves, their enemies;—in which that which calls itself *government* is but a system of *regulated pillage*;—in that quarter of the world, by no such Utopian conquest, will its tranquillity, and that sort of *order* which calls itself *good order*, be disturbed.

On the ground of *Constitutional Law*, the system of law you have already—you, who on that ground have so nobly shaken off the yoke of *English law*—the system you have already, is as to all essentials, a model for all nations. Accept then my services, so shall it be on the ground of *Penal law*,

so shall it be on the ground of *Civil* law: accept my services, at one lift you shall ease your necks of that degrading yoke. Without *Parliamentary Reform*, Britain cannot,—without revolution or civil war, no other monarchy can,—take for a model the essentials of your *Constitutional* Law: but, on the ground of *Penal* Law, and to no inconsiderable extent, even on the ground of *Civil* Law, it might—and that without change in any part of the constitutional branch,—be made use of as a model any where: in *Spain*, in *Russia*, in *Morocco*. Hence it was—and without any thought or need of betraying him into any act of self-denying beneficence—(for my views, of the *contagious* influence of *reason* in the character of a *precedent*, were not at that time so clear as they have become since,)—hence it was, that these my services were offered to the *Alexander* of these days.

Yes, my friends—these labours of mine—labours which of *themselves* are nothing—dreams of an obscure individual—let them but be accepted by *you*—you shall be a people of conquerors. Conquerors, and with what arms? With the sword? No: but with the pen. By what means? Violence and destruction?—No: but reason and beneficence. As this your dominion spreads,—not tears and curses, but smiles, and blessings, will attend your conquest in its course. Where the fear of his sword ends, there ends the empire of the *military* conqueror. To the conquest to which *you* are here invited, no ultimate limits can be assigned, other than those which bound the habitable globe.

To force new laws upon a reluctant and abhorring people, is—in addition to unpunishable depredation—the object and effect of vulgar conquest: to behold your laws not only accepted but

sought after—sought after by an admiring people—will be yours.

To those conquests, of which slaughter is the instrument, and plunder the fruit,—the most brutal among barbarians have shewn themselves not incompetent. By the best instructed minds alone can any such conquest be attained, as that to which *you* are here invited.

Stranger! (say you) *why thus pressing?—pressing, and for labour without hire?*

Friends (say I) *your comfort* would be *mine*. Your *conquests*—the conquests I have thus been planning for you—these indeed I can not live to see. But of your *comfort*—your internal comfort—the increase of comfort I have been speaking of—of this scene, to the eye of a sanguine and self-flattering imagination, a sort of *Pisgah* view is not impossible. My last hour cannot be far distant: this is the preparation I am making for it: by prospects such as these, if by any thing, will it be sweetened.

To the Almighty, I must confess I know not how to render myself any thing better than an “*unprofitable servant* :” as to what concerns my fellow-men, I am not without hope.

P. S. *July 22, 1817.*—What follows is an afterthought,—and, had it occurred in time, might with more propriety perhaps, have been addressed to the several situations, of your *Governors* and your other *official Servants*, than to yours. Of such of my works, as, according to my recollection, had ever been in print, a list is subjoined to the above-mentioned “*Papers relative to Codification and Public Instruction*,” a copy of which has been sent, as above, to the Governor of each State. Taking in hand an almost forgotten portion of the earliest of those of my works that were pub-

lished in French—works, no one of which has ever yet seen the light in English,—I find in the first of its three volumes, an Essay in 227 8vo. pages, intituled “*Vue Générale d’un corps complet de Legislation*”—*General View of a complete body of proposed Law*. Published so long ago as 1802,—known more or less in every country of Europe,—Russia, where it has received two translations—Russia, and even Spain itself, not excepted,—never, in the language which gave it birth, has it yet seen the light. Among those within whose field of study a work on this subject is included,—so small has been the number, of those to whom it would not be sufficiently intelligible in French,—that by no Bookseller has it been found worth while, to call for

an Edition of it in English. In America however, what strikes me is—that, in any State, if any such there be, in which this my offer shall have found acceptance,—a translation, of this part at least, for the use of the Legislature of that State, might form a not unuseful prelude,—or, in case of death, a succedaneum,—to the work, which, in the case supposed, I should take in hand.

Farewell at length, my Friends,—judge, whether if employed by you, or for you, I should ever fail of being,

Your affectionate and

Faithful servant,

JEREMY BENTHAM.

P. S.—26th August, 1817.

THOUGH without the permission or privity of my friend,—the facts not having any thing of secrecy in them, nor any thing but what does honour to all parties,—I trust I am not misusing his confidence, in giving in English an Extract from a private Letter of his to myself, dated Geneva, the 12th instant.

“ News about the Code. August 9th, Third meeting of the Commissioners. Question—to adopt or not the bases of the plan I had proposed: the bases merely; without notice taken as yet of the details: that is to say, the great division into General Titles, Private Offences, Public Offences: proceeding then with the *Definition* of each Offence, the *Exposition* of the terms of the Definition, the *Punishments*, the *Causes of Aggravation*, with the corresponding *Extra Punishments*, the *Causes of Extenuation*, with the corresponding *Reductions in the Punishments*. Setting out from the French Penal Code, under which we have been living these twenty years,—understand that our Commission contains, amongst other Members, three Judges, and two Advocates, all practised in these French forms, none of them young—none of them to whom the study of a new Code could, naturally speaking, be a very palatable one. Think of this, and then think, whether it could be altogether without apprehension that I had been looking for the result of this Meeting. A month had been taken for their examining, each by himself, the General Plan, together with divers articles, which, to serve as examples, I had subjoined to it. The Meeting immediately preceding the one in

“question had, on my part, been employed throughout in stating rea-
 “sons, and answering objections: and, when it broke up, I was not
 “without my misgivings about the sort of impression that had been
 “made. Well:—the next day but one, viz. Yesterday, the Plan was
 “adopted:—adopted unanimously—and myself invited to pursue it.”

JEREMY BENTHAM.

No. VI.

*To JAMES MADISON, late President of the
American United States.*

LETTER II.

SIR,

LENGTH of intervals considered, our correspondence has been better suited to an antediluvian life, than to one which is so near its close as mine is.* I mention this—not in the way of reproach to yourself, from whom at no time, to such an address as mine, was any answer at all matter of debt, but purely in the way of regret on my own account. Two works of mine—not to mention a number of others begun, continued, or ended,—two works in particular—one, a continuation of *Chrestomathia*—the other, on *Parliamentary Reform*—both

* Date of Mr. Bentham's Letter to Mr. Madison, October, 1811.

Date of Mr. Madison's Letter to Mr. Bentham, 8th May, 1816.

Date of this Letter, September, 1817:

of them calling irresistibly for dispatch—will help plead my excuse.

Your letter announced an approaching present: a present of appropriate books:—some unknown accident has as yet deprived me of it. Since then, I have had to return, as I did with all due respect and gratitude—to return as soon as received, and without staying so much as to look at it, the present of an Emperor. Come when it will, I shall not return yours.

The Emperor's would have been of no use to me. What the pearl was to the cock, such the diamond would have been to me. Coupled with those declarations, of the sincerity of which it affords an additional assurance, and with that testimony, the weight of which no part of the civilized world can help recognizing, the bare announcement of yours confers on me a title of honour: a title altogether apposite, and which no herald can tear from me or deface. Of all men in Europe, I am then, in your declared opinion, the man best qualified for the drawing up a complete body of laws. I rejoice to find it so. Why? because by this means I obtain the fairest chance, which, from any one hand I could have received, for the being enabled to render to mankind that service, the

endeavour to qualify myself for which, has been the great business of my life.

It will find you—this my second letter—in possession of comparative leisure, reposing upon your laurels: your country deprived, for a time at least, of the continuation of your services in that particular shape in future, though it neither is, nor so long as it exists, will be, deprived either of the fruits of those services, or of the grateful remembrance of them.

In print, if in any shape, will it meet your eye: in the same shape, and at the same time, my first letter once more, and with it that letter of yours by which I was so highly honoured. *Apology* you will require none: *reason* makes sure of acceptance at your hands. By this publicity, though no licence for it has been obtained, no confidence is violated: neither does the subject, nor do our relative situations, admit of any demand for secrecy. A letter from the President of the American United States—a letter from such a quarter, and such a letter—could no more have been intended to sleep on the shelf, than a ribbon with a star to it, to lie for ever locked up in a wardrobe.

I proceed to business. Speaking of my “thoughts” on the subject of a complete code of laws, “although we can not avail ourselves “of them in the mode best in itself, I do not “overlook” (say you) “the prospect that the “fruits of your labours may in some other not “be lost to us: flattering myself that my silence will have no wise diverted or suspended “them, as far as the United States may have a “particular interest in them.”

To this surmise, Sir, the result has not proved conformable. To the production of the *service*—if by that name I may venture to designate it—to the production of the *service* proffered, the *pay* required in advance for the purpose of encouragement was altogether necessary: the cause failing, the effect failed with it:—*alacrity*, in sufficient quantity, could not be summoned up. From the *President* of the *American United States*, a word would have sufficed to command—and for the remainder of his life—in this highest of all temporal fields, the labour of an Englishman:—an Englishman of whom,—even in his life-time, and notwithstanding the prophecy,—in his own country, as well as in other countries beside his own, it has, even in the highest situations, been every now

and then said, that his labours in that same field have already been not altogether without their value. Of the one word needed, political propriety, it seems, forbade the utterance: pronounced as the decision has been, by so completely and exclusively competent an authority, —the sentiments of regret, of which it could not but be productive, have had for their accompaniment no others than those of respect and acquiescence.

From a quarter, to which it was addressed without being exposed to the same causes of rejection, a subsequent offer of the same kind has been more fortunate. The same paper which conveys to you this address, will likewise convey to you the return made for a letter of mine to the Governor of Pennsylvania:—made, in the first instance, by a letter from Mr. Snyder, Governor of that State, and afterwards by a communication made by him of my offer to the Legislature of that same State: both preceded by that letter of Mr. Gallatin, to which I can not but have been in great measure, if not altogether, indebted for so flattering a result.

Such is the state of things, in which I proceed to confess to you the consideration, which has given birth to the liberty I am now taking

in addressing to you, in this public manner, this fresh testimony of my respect. It is the desire of relieving the proposed undertaking, if it be in my power, from the force of those objections, which it finds opposed to it by the authority of your name: and which, bearing upon it from such a height, have, notwithstanding the softness of the language in which they are clothed, been felt acting against it with so formidable a pressure.

Before I state the objections themselves, permit me to make what advantage I can of the circumstance of *time*.

The *time*, at which they presented themselves to your view, was a time, at which the business of that high and most laborious office of yours was pressing with all its weight upon your mind. In that state of things my wonder is—how you could have found any consideration at all to bestow—to bestow upon an offer, the subject of which,—coming as it did in competition with the duties necessarily appertaining to that office, yet in its extent outstretching them all,—could not assuredly be said to have any obligatory claim on your attention,—rather than that the result of the quantity of attention, which you *did* find means to bestow upon it, was such as not to put at once

a negative upon all ulterior consideration. Under these circumstances, nothing forbids my hope, that this appeal from Cæsar to Cæsar—from Cæsar unprovided, to the same Cæsar provided, with sufficient time for consideration, as well as means of information—will find the door completely open to it.

Under these circumstances, no wonder if, to a hasty glance, the extent and apparent difficulty of the undertaking being considered, the “*practicability*” of it should have presented itself to your mind as affording “*room for doubt.*”

Three distinguishable circumstances belonging to it are accordingly mentioned by you in that view, viz. on the one hand the *extent* proposed to be given to the work: on the other hand, the scantiness of the quantity of “*space,*” and the quantity of “*time,*” supposed to be looked to by me, as sufficient for the execution of it. “The only room for doubt” (say you, p. 69) “would be as to its *practicability,* notwithstanding your peculiar advantages for it, “within a space and a time such as appear to “have been contemplated.”

Postponing for a moment what it appears to me you had in view, in the use made of the word *extent*,—on the subject of *time*, on recurrence to my Letter, (pages 56, 57, 58) I hope you will not find me speaking otherwise than with that degree of undeterminateness, the opposite to which would have been so unsuitable to the nature of an undertaking of this sort.

In speaking of *space*, if I do not misconceive you, what you had in view was, principally *quantity of matter*; *space* only as corresponding to the *quantity of matter*: viz. such portion of *space* as will be necessary, for the containing of such *quantity of matter* as shall have been found necessary.

Now as to both these circumstances, no sooner do they come to be looked into with any degree of steadiness, than their incapacity of affording any material objection to the proposed undertaking will, I cannot but flatter myself, be found so clear and complete, that they may be laid out of the case almost at the first word.

1. With regard to *time*,—supposing either the work to be useless, or the execution of it im-

practicable, all question regarding *time* is useless: supposing the work not to be useless, nor the execution of it impracticable, the answer afforded to the objection by the trivial adage, *better late than never*, will, I cannot but flatter myself, be found quite sufficient for the removal of it.

2. With regard to *quantity of matter*,—if, in the case of a work of the *sort* in question, the magnitude of this quantity be *not* regarded as capable of being productive of inconvenience, it cannot be capable of operating as an objection to any *individual* work of that same sort. If it *be* regarded as capable of being productive of inconvenience, surely the magnitude of this inconvenience will be more likely to be reduced, by a work having among its chief objects the reduction of it, than in a state of things in which no such endeavour has been, or will be, used.

For the expedients employed by me for this reduction, I will beg leave to refer you to Letter III. of those Letters of mine to the Citizens of your United States, which will be in circulation at the same time with this. These expedients, are they, any one of them, actually in use at present? In any of them, is there any thing that

is either useless or impracticable? To no one of these questions can I frame to myself any answer from you other than a favourable one.

Forget not here, Sir, let me entreat you, that from the not being provided with any determinate set of words for the expression of it, that portion of the rule of action which is in the state of *Common Law*, presses—not with the less weight, but with the more weight—presses, if not actually upon the *minds*, upon the *condition*, of those whose lot depends upon it. By giving to it a set of determinate words—that is, by converting it into *Statute Law*, that which before was *infinite* is rendered *finite*. [See my first Letter, p. 35.]

These comparatively light considerations being thus disposed of, I proceed in my humble endeavour to solve that doubt of yours which, space and time out of the question, respects the question of “*practicability*” absolutely considered.

“ With the best plan for converting the Common Law into a written law, the evil” (you say) “ cannot be more than partially cured.” What, on this occasion, was the evil in view I

do not find mentioned in express terms : but, from the last preceding paragraph, what I should expect to find it to have been, is—“ the extent” of “ the unwritten law.” “ With “ respect to the unwritten law,” (you say) “ it “ may not be improper to observe, (p. 69) that “ the extent of it has not been a little abridged “ in this country by successive events :” whereupon you proceed to specify these events, or some of them : viz. the “ emigration”—the passing of the “ Colonial Statutes”—and “ the “ Revolution.”

Having thus explained what in your conception the evil was,—and, in relation to this evil, observed—what at the moment seemed to you to be the case—viz. that it “ cannot be more than partially cured,”—you go on and state what, at that same time presented itself to you as the reason or cause of the supposed impracticability : “ the complex technical terms to be employed in the text, necessarily requiring” (you say) “ a resort for definition and explanation to “ the volumes containing that description of “ law.”

In this latter observation, considered in itself, I see nothing to controvert. But in the character of an argument, in which, if I do not

misconceive the matter, it was at the moment presenting itself to you,—viz. that of an argument, operating in proof, or support of the notion, that “the evil” in question, viz. the evil consisting in the extent occupied by that part of the rule of action which is in the state of Common Law “cannot be more than partially cured,”—here of necessity comes my dissent.

“*Resort*” to them—these volumes?—Oh yes: and make the most of them: this is what I myself have at all times done, and, for the particular purpose in question, should of myself be as diligent to do as you could wish to see me. But, on the part of the supposed draughtsman, the necessity of a resort to them once for all, for the purpose of his draught, is *one* thing: the necessity of preserving them for ever in their present state, as part and parcel of the rule of action, viz. in their present totality, with the continually supervening additions which on the same principle would be necessary, is *another*. Of the matter of “definition and explanation” to which you thus allude, taken in the aggregate, the mass will be found either *adequate* to the purpose, or *inadequate*: in neither case do I see how any bar is opposed by it to the complete cure of the evil in question: to a result so desirable as that of the conversion of that por-

tion of the rule of action which is in the state of Common Law, into the state of Written Law.

First suppose it *adequate*. In that case,—from the volumes in question,—leaving where it stands the immense mass of argumentation,—pick out every particle of this precious matter,—bestow upon it the touch of the legislative sceptre, forbidding all future reference to any one of the volumes from whence it was extracted—this done,—the conversion is effected.

Now suppose it *inadequate*. In this inadequacy, on the part of that portion of the rule of action which is in the state of Common Law,—what is there that should prevent, or so much as obstruct, the supplying of the deficiency by Written Law?—By that same instrument, the affording supplies to all such deficiencies, or supposed deficiencies, as present themselves in the rule of action,—of the rule of action, in which so ever of the two states it is found, viz. that of Written Law or that of Common Law,—is it not what in your several United States, as in every other government, with more or less success you are doing every day?

While the paragraphs in question were pen-

ning, it was not in the nature of the case, that you should have been bestowing upon the subject any such closeness and continuity of attention, as that which I have been under the necessity of bestowing upon it. At the moment, if I do not misconceive you, the mass of the matter of “definition and explanation,”—afforded by the Common Law, as exhibited in the volumes in question,—presented itself to your mind, as being actually adequate to the purpose in question: viz. that of affording to the minds in question a *clear, correct, and complete* conception, of the rule of action, meaning of such part of it as corresponded to the “*extent*” occupied by this same Common Law: and, not only adequate, but so exclusively adequate, that nothing, that in the shape of Written Law was likely to be substituted, seemed to afford any sufficient promise of coming up to it in this respect.

But if, for the moment, such, Sir, was really your conception of the matter,—I can not but flatter myself, that, before this my letter has been read through by you, if such be the honour destined for it,—at any rate if, for a supplement to it, you can prevail upon yourself to read the accompanying letters, which are addressed to the Citizens at large of your United

States,—that conception will have undergone a change.

The positions which, in this view, I have to submit to you, Sir, are these, viz.

1. That,—if, taken in themselves, the words of the matters in question were, so far as they went, adequate to the purpose in question,—yet, being as yet but words of *Common Law*, they would, by that very circumstance, be effectually prevented from being adequate to the desirable purpose above specified.

2. That, on that same supposition, by the single circumstance of being adopted and employed by the legislature, and by that means converted into *Written, i. e. Statute Law*, they would be rendered adequate to that same purpose.

3. But that, in truth,—even with reference to that portion of extent, which, in the field of law, the several masses of them respectively occupy,—so it is, that in most, not to say in all instances, they would be found to fail of being thus adequate.

4. That, taking the aggregate of them in its

whole extent, and adding to it that portion of the matter of law which is in the state of Statute law, the mass, thus composed, would be found to fail altogether of being thus adequate.

5. That, in the nature of the deficiency in question, there is nothing to prevent its receiving such supply as shall be adequate.

6. That,—with the exception of such imperfections as can not but be the result of human infirmity in general, and of my own infirmities in particular,—I can not but regard even myself as competent to the affording of such supply: and *that* in such sort as not to leave any very extensive or urgent demand for amendment.

As to the two first of these six positions,—for the proof of them, I must beg leave to refer you to what may be found under the head of *completeness*, or *all-comprehensiveness*, in the fourth of my eight accompanying Letters above-mentioned.

As to the four remaining positions,—in the instance of none of them does the nature of the case, on any such occasion as the present,—within the limits necessary to be prescribed to the

present address,—admit of any such complete demonstration, as I can not but flatter myself with the thoughts of having given in the instance of the two first. Speaking in general, and taking the whole together,—no better proof, I must confess, can I find than this, viz. that, of a survey of more than fifty years continuance, a persuasion of my own to this effect has been the result.

Fortunately for me,—to every practical purpose, if I do not much misconceive the matter, nothing more is necessary than the absence of all demonstration to the contrary. As to the matters in question, viz. the several masses of the matter of definition and explanation, there they are. Such fresh ones as I shall have to present—let them come in competition with the old ones, it will rest with the legislature in question to take its choice: from the possession of this choice there will be something to gain, there can not be any thing to suffer or to lose.

But, though in regard to these same four last positions, the nature of the case, as above, admits not of any thing like a complete proof of them,—yet a few observations there are of detail, which, by the direction they may serve to give

to a reader's attention, may at any rate be conducive to that purpose.

Among the subjects presenting a demand for definition and explanation, take for example these six: viz. *offences, complex punishments, species of private property, offices, efficient causes of title to property, do. of do. to office*:—subjects, in respect of extent, every one of them widely comprehensive;—all of them taken together not very widely short of being all-comprehensive. For the advantage of employing the current name of a class of objects continually under view, add *contracts*: *contract* being one of the most extensively exemplified of the *efficient causes of title* that bear reference to that *species of property*, which consists in the right to certain determinate *services*, at the hand of human agents: say—in the right to the corresponding *services*.

Clearness, correctness, and completeness—not to mention the subordinate and subservient qualities of *conciseness* and *compactness*—in the above-mentioned three articles may be seen, if I mistake not, the *properties*, which to answer its purpose, a “*definition*” or “*explanation*” must be possessed of. These, in the case of any *one* such object taken by itself: to these,

—in the case of the whole aggregate of the objects of this kind contained in a complete body of law,—add *consistency*, and again *completeness*, viz. with reference to that whole.

To render *clearness* itself the more clear, add for the explanation of it the indication of its two distinguishable modes, viz. exemption from *obscurity*, and exemption from *ambiguity*.

Now as to the use derivable, with reference to the present purpose, from these same specifications. Taking for the subject of the inquiry the *definitions* and *explanations* actually afforded by this same *Common Law*,—are they in a degree approaching to adequate, possessed of these same properties? An averment which I will venture, Sir, to make, and *that* without any apprehension of your finding much of error in it, is—that the more closely you were to look into the assemblage of them in this view, the further you would find them from being in any such desirable case.

Look at the state of things in which they were respectively penned,—the more closely you look into it, the more thoroughly you will, I think, be convinced—that the endowing them with

these qualities, in a degree comparable to that with which they might at present be endowed with them—endowed with them by a single hand, having that object steadily in view—was, at the several points of time at which they were respectively penned, morally impossible.

Let it even be supposed, that, on the part of the several authors, the desire of investing them with these several qualities was constantly present,—still, that any share of appropriate power adequate to the production of the effect was, generally speaking, in their hands, is a position, the contrary of which may without hesitation be asserted. No otherwise than in so far as the same qualities were to be found in the several individual decisions from which they were deduced,—or to answer the professed purpose must have been deduced,—could these same qualities be given to the definition and explanation in question: and, the more closely any eye will bring itself to look into those same decisions in this view, the further will it find them to be from being in possession of any one of those same indispensable properties.

From *Littleton*, down to *Hawkins* and *Co-myns*, through *Coke* and *Lord Bacon*,—from the reign of Edward the Fourth to the reign of

George the Second—to go no lower—will any one have to look for the various hands, by which those same definitions and explanations were penned. In so many successive ages—all of them, in every branch of art and science bearing relation to the subject, so little advanced in comparison of the present,—in regard to those same three qualities, viz. *clearness*, *correctness*, and *completeness*, all in equal degree, on what reasonable ground can any hope of finding them, in the instance of each one of all those several writers, be entertained? or of finding in those same individuals, in any such degree, the qualities of *consistency* and *completeness*, with reference to the whole field of law, and the whole aggregate of the several definitions and explanations, with which it requires to be covered?—of finding all this in all these several individuals, by no one of whom does so much as the idea of any such whole appear to have ever been entertained?

In every other branch of art and science,—on the part of the most advanced of those past ages, think, Sir, of the universally acknowledged inferiority in comparison of the present age. Think whether, to the general rule presented by that thought,—in the arts and sciences belonging to *legislation* and jurisprudence, there

be any circumstance, by which an exception can be presented!

Still, with an eye to the main question, viz. that concerning the “practicability” of effecting by means of a body of *written*, alias *statute law*, a more than “partial cure” of the evil inherent in *common*, alias *unwritten* law,—permit me once more to call to view the substance of that paragraph of yours by which the intimation given of the necessity of a resort to the “complex terms” in question “for definition and explanation” is immediately preceded. Of this “unwritten law” “the extent (say you) “has been not a little abridged in this country” (meaning that of the United States), by “successive events:” of which events, the examples which you thereupon give are—the “*emigration*” to America—the penning of the several “*colonial statutes*,” and the “*Revolution*” by which the “*Colonies*” were converted into “*Independent States*.”

True all this: but, to the purpose to which it bears reference—viz. the position representing as matter of “*doubt*” the “*practicability*” of the operation in question,—meaning the proposed compleat “conversion of the common into a written law,” and thereby, the extirpation

of unwritten law,—in what way does it add strength? One glance more, and if I do not deceive myself, the circumstance in question will be found by you to be productive of a contrary effect. Towards the ultimate end in question, such were the advances successively made by so many successive operations. Here then, to the several amounts in question, has the effect in question been actually produced; the very effect, in relation to which, when taken in its totality, the doubt, as to its “practicability,” had been entertained. Yet, on any one of those occasions, any such general design as that of the compleat extirpation of unwritten law, was it ever in view? No, assuredly. But, when it is considered, that, without so much as taking it into contemplation, such advances were thus made towards the accomplishment of this general design,—in this state of things—in the advances thus made—can any ground be really to be found, for doubting of the probability of such accomplishment, only because this same design is actually taken into contemplation, and the whole force of a long-exercised mind applied to it?

All this while, one thing there is, which I am perfectly ready to admit: and that is, that,—merely by continuing to operate without any

deviation in that precise course, by operating in which those same advances were made,—true it is, that the compleat accomplishment of the desired object would not be practicable. I mean, by continuing to enact statute after statute in the customary form:—in the form customary with us, and thence with you: in the form of a naked *ordinance*, unaccompanied by any portion of matter in the form of *definition* and *explanation*. At no point of time, in any quantity worth regarding, has any such matter been in use to be inserted in any article of written law: such is the fact. As to the reason—if reason be here worth thinking about—at no *antecedent* point of time had any such matter been in use to be inserted. This in general is *man's reason*, in the sense in which *reason* is put for *efficient* or *final cause*: this more particularly is *lawyer's reason*. At the very outset, when *law* was in her cradle, what in this same sense was the *reason*? Even this,—that, in every instance, in those days, (not to speak of the present) laws were the result of narrow and partial views—rude produce, huddled together upon the spur of the occasion. No superintending mind, either actually all-comprehensive—or so much as endeavouring, or even pretending, to be all-comprehensive,—employed upon the work.

But, by this circumstance, viz. that in the form of *statute law* no such matter of definition and explanation hath as yet been in use to be given, is the demand for it rendered the less real, or the less urgent?—Not it indeed. Assuredly, Sir, it will not be so in *your* estimation, if in this respect the view you take of it on the occasion of this *my second* letter, continues the same as that which you were taking of it while writing *your first*: in relation to “the complex technical terms to be employed in the text” your observation is—that these will “be necessarily requiring a resort for definition and explanation.” At this point, for the present purpose, I take the liberty of stopping.—Why? Because, in this observation is of course included the acknowledgement of the existence of a demand—a real, an indispensable demand—for “*definition and explanation*,”—whatsoever be the source, or the receptacle, looked to, or to be looked to, for the supply.

In conclusion, as to this same point, on which I am happy enough to find my own conception confirmed by yours—viz. That in every body of law there is a class of terms that will be found “necessarily requiring a resort for definition and explanation somewhere,” I will

beg leave for the last time, to beg your attention for the distinction which it involves.

Of the whole of the intended matter of your laws, suppose the form to be that in which it exists at present, viz. that of a set of *ordinances*—*naked ordinances* as above explained—unaccompanied with any number of definitions or explanations. For conception sake, suppose the whole of it actually penned: this whole matter will be composed of a determined assemblage of words. Of these same words, for one cause or another, some—for so we are agreed—will be found to stand in need of definition or explanation; others not. Now then,—due notice taken of the distinction,—on the occasion of it, I will venture to propose a practical rule. Among these same words, be they respectively in other respects what they may—to those which present themselves as standing in need of *definition or explanation*,—for a sort of cloathing or appendage to them, give in each instance, in the *very body* of your laws, the requisite lot of definition or explanation accordingly: those which present no such need—leave them, as you found them, undefined and unexplained.

To the list of *explanation-needing* terms, be-

long unquestionably those which you have mentioned: viz. “the complex technical ones.” But these will not be the only ones: and by real and distinctly ascertained exigency, not by custom alone, would the supply which I should afford be regulated. For examples of this supply, permit me to refer you to that one of those works of mine, to which, in the French dress for which it is indebted to the skill of Mr. Dumont, the honour of your notice has not been altogether wanting; and which, as to this point, has already received adoption at Geneva, as mentioned in the Postscript to my above-mentioned Letters to your Fellow-Citizens.

In the mean time,—for examples of the demand *without* the supply, permit me to refer you back to that page of this letter, (page 160) in which, in the express character of “*subjects presenting a demand for definition and explanation,*” half a dozen subjects have been specified. And note, that of these several subjects, the names are names of whole *classes*: and that, under each of these classes, *genera*, in a number more or less considerable, would be found comprehended.

As to words *not* needing definition or explanation, viz. in a book of law,—they will be

found to be in general those of which the body of the language is composed: those of which, even for the purpose of legal operation, the precise import is supposed to be sufficiently made known, by the use made of them in ordinary converse. Such for example, are those, of which the present page, with some of the preceding ones, is composed. Not that between the one class and the other, the nature of the case admits of any permanent line of distinction. Be the word or phrase what it may,—should any serious apprehension present itself, that, while by one person it is understood in the sense intended, by another person it may be understood in a sense *not* intended, and that in any such sense, any such effect as that of *sufferance* or *loss* in any shape, may probably be the result of misconception,—here, in the eyes of a humane and attentive legislator, will be a demand for definition or explanation, or both, as the case may be.

At this rate—I think I hear you saying—may not the demand be infinite?—No, Sir: the demand will not be infinite. Wheresoever by ordinary good sense, unfurnished with any special and appropriate learning, the supply promises to be afforded—afforded, by neighbour to neighbour, by friend to friend—afforded without

need of resort to any assembly of legislators, or to any individual man of law—there the supply may be left to be thus afforded: there, if to a book, the resort may be to an ordinary dictionary: and the book of the laws may thus be left unburthened by it.

Having thus applied my endeavours to the removal of those doubts, which my respect for the quarter from which I viewed them coming down upon me had rendered so alarming—applied these my humble endeavours—and now that they are closed, I can not but flatter myself, not altogether without success—for any further particulars, if necessary, permit me, Sir, to refer you back to my first letter to yourself, and then onwards to those letters of mine on this same subject, which I have ventured to address to the whole body of my wished-for masters—the citizens of your United States. Believe me ever, with the truest respect and gratitude,

Sir,

Your much obliged Servant,

JEREMY BENTHAM.

James Madison, Esq.

Montpelier, State of Virginia.

THE END.

and it is not to be regretted that the
 my substantial man of law—there the supply
 may be left to be thus afforded: there it is to a
 book, the text may be to an ordinary the
 theory: and the book of the laws may thus be
 left unimpaired by it.

Having thus applied my endeavours to the
 removal of those doubts which my respect for
 the printer from which I derived them concerning
 down upon me had rendered so alarming—
 applied them my humble endeavours—and now
 that they are cleared, I can not but flatter my-
 self not altogether without success—for any
 further particulars, if necessary, I am at the
 to refer you back to my first letter to yourself,
 and then onwards to those letters of mine on
 this same subject, which I have referred to
 address to the whole body of my fellow-
 masters—the citizens of your United States.
 Believe me ever, with the truest respect and
 gratitude,

Sir,

Your much obliged servant,

JEREMY BENTHAM.

London, 12th May, 1792.

Monmouth, State of Virginia.

THE END.

J. BENTHAM, Printer,
 Fleet Street, London.

Bentham, Jeremy,

Papers relative to codification and public instruction including
correspondence with the Russian emperor and divers constituted authorities
in the American United States

London 1817

Pol.g. 64 d

urn:nbn:de:bvb:12-bsb10768248-6